

**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

**MICHAEL ALASTAIR INKSTER, 159
Commercial Street, Lerwick**

1. A Complaint dated 30 January 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Michael Alastair Inkster, 159 Commercial Street, Lerwick (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 18 June 2018 and notice thereof was duly served upon the Respondent. A Record was lodged.
5. The hearing took place on 18 June 2018. The Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented himself. Of consent, the Tribunal granted the Fiscal's motion to amend the Record. A signed Joint Minute admitting the averments of fact and duty in the amended Record was lodged.
6. The Tribunal found the following facts established:-

- 6.1 The Respondent's date of birth is 21 July 1968. He was enrolled as a solicitor on 11 September 1991. Between 27 September 1991 and 26 June 1992 the Respondent was an employee of Aberdeen Considine & Co, Solicitors, 5-9 Bon Accord Crescent, Aberdeen. Between 29 June 1992 and 30 June 1993 the Respondent was an employee of Peterkins, Solicitors, 100 Union Street, Aberdeen. Between 1 July 1993 and 13 March 1995, the Respondent was an employee of Dowle, Smith and Rutherford, Solicitors, St Olaf's Hall, Church Road, Lerwick. Since 14 March 1995 he has been the sole principal of Michael Inkster & Co, 159 Commercial Street, Lerwick.
- 6.2 Members of the Complainers' financial compliance team inspected the Respondent's books and records on 4 and 5 November 2015. At said inspection there were twenty one matters where the firm held historic balances, the earliest of which dated back to 1997. Whilst the smallest sum in question was £22, three sums in excess of £1,000 were identified namely the executry of the late Mr W B where the Respondent had held £1,121.55 since 2011; the executry of the late Mr C H where the Respondent had held the sum of £1,442.69 since 2012 and the executry of the late Mr W H where the Respondent had held £3,064.08 since 2014.
- 6.3 In post inspection correspondence the Respondent stated that most of irregular balances that were not fully dealt with were very historic indeed and related to his firm's first ten to twelve years, in other words the period between 1995 and 2007.
- 6.4 A number of cheques which were recorded as having being issued to Registers of Scotland were outstanding and had been for some time, namely:-
- (i) Cheque number 4761 dated 19 August 2010 which related to a disposition in favour of SFS "property not known".
 - (ii) Cheque number 4827 dated 18 November 2010 relative to the purchase of 17 Chapel Street, Peterhead on behalf of AC and DS.
 - (iii) Cheque number 3910 relative to the purchase of land in Fetlar on behalf of the S A Society.

- (iv) Messrs E H and S Y had purchased ground at Crugarth, Burra on 5 October 2010; the Respondent subsequently issued cheques numbers 4463 on 22 November 2010 relative to the recording of the disposition and cheque number 4591 issued on 23 December 2011 relative to the recording of a deed of servitude. The property details and the lender were not recorded and no loan funds were seen to pass through the firm and the cheques remained uncashed.
- (v) In relation to Mr E H and Ms E G a balance of £54.87 had been held in the ledger since 27 June 2014 but two cheques had been cancelled as being out of date, being cheques in favour of Registers of Scotland in relation to discharges.
- (vi) In relation to Mr B G there was a balance of £60 held since 2 December 2010 which appeared to relate to a discharge which had not been recorded.
- (vii) In relation to Mr B G and Ms A H a balance of £60 had been held since 16 August 2011 and it appeared that the disposition had not been recorded.
- (viii) In relation to Mr & Mrs J P G L a balance of £122.90 had been held since 16 January 1996. It appeared that this related to a discharge which had not yet been recorded.
- (ix) In relation to Mr D N and Mr G G a balance of £133.95 had been held by since 13 August 2013 and where it appeared that a discharge had not yet been recorded. In none of these cases were there unrecorded deeds.

The post inspection correspondence confirmed that in fact there were no unrecorded deeds.

- 6.5 Only the client credit balances for certain ledgers were detailed on the firm's trial balance. The inspection revealed that a number of debit balances amounting to £5,596.30 (the largest individual balance being £2,397.59) were not recorded on the firm's trial balance. The issues of aged balances, out of date cheques, and

failure to record debit balances, were raised at the previous inspection of the Respondent's books and records which took place on 6 and 7 September 2011.

- 6.6 A ledger opened in the name of Mr C H recorded a debit balance of £255.90 whereas the true position was that there was a credit balance of £94.10. The latter balance was recorded correctly in the list of credit balances. This issue was raised at previous inspections but had still not been dealt with.
- 6.7 There was a 15p difference between the client bank balance as recorded in the trial balance and the client bank balance as per the reconciliation as at 30 September 2015. The April trial balance was also seen at the inspection and the same 15p difference was also seen at the end of that month.
- 6.8 A further twelve cheques drawn on the client bank account were out of date but had not been cancelled and re-issued. The earliest of these was from August 2003 for the sum of £7,939. Another from August 2011 represented a payment due to Shetland Island Council on behalf of Mr W F for £2,331. Only one of the remaining cheques was for a sum exceeding £100.
- 6.9 A further four cheques drawn on the firm's bank were identified dating from 2007 until 2011 three of which appeared to relate to unrecorded deeds. The fourth was a payment of £23.25 due to Royal Mail. All remained uncashed, and had not been cancelled or reissued. The post inspection correspondence confirmed that in fact there were no unrecorded deeds.
- 6.10 The respondent sold a property on behalf of Mrs A J M and others. Four cheques in relation to the net free sale proceeds were posted to the client ledger on 15 May 2015. The cheques were not issued until 18 May 2015.
- 6.11 The respondent had failed to undertake or retain or exhibit evidence of having undertaken customer due diligence in respect of the identity of (a) his client Miss L N (C) in relation to the sale of subjects at Lud Farm, Quendale, Shetland in May 2015 or (b) his client B B P Limited in relation to the purchase of subjects at Brevik House, South Road, Lerwick, Shetland in August.

- 6.12 The respondent had failed to undertake or retain or exhibit evidence of having undertaken customer due diligence in respect of the source of wealth or funds in respect of:
- (a) The purchase of subjects at Brevik House, South Road, Lerwick, Shetland by B B P Limited in or around August 2015. In this connection the respondent received £712,939 on 19 August 2015.
 - (b) The purchase of subjects at 5 The Strand, Gott, Shetland by Mr S O in or about August 2015. In this connection the respondent received £10,275 on 13 August 2015. On this occasion the sums had come directly in to the respondent's client account but the client's name was not detailed on the bank statement.
 - (c) The purchase of subjects at 53 Gilbertson Road, Lerwick, Shetland by Mr S U in or around June 2015. In this connection the respondent received £51,500 on 22 June 2015.
 - (d) The purchase of subjects at Leans, North Roe, Shetland by Mrs G R in or around August 2015. In this connection the respondent received £36,254 on 19 August 2015.
- 6.13 The various cheques made payable to banks and building societies in respect of the late Mr J O's executry were not designated.
- 6.14 The respondent failed to issue a statement of demands and needs and information letter in respect of the executry of the late C A where a bond of caution had been arranged on 19 November 2013.
- 6.15 Firm nominal balances as follows were selected for review from the firm trial balance: nominal ledgers: trade debtors £12,290 dr; prepayments £2465.76 dr; Jeanna loan £4,800 credit; accruals £1,000 credit; disbursements £2,340.78 dr and general expenses £301.84 dr. How the balances were made up was not apparent from the firm's cashbook and a breakdown as to how the balances were made up

was requested but could not be provided during the inspection. The Respondent stated that an explanation was being sought from his accountant.

- 6.16 By email sent to the Respondent on 7 January 2016, the Complainers required the Respondent to forward his client bank reconciliation as at the end of the months of November and December 2015 and to forward copies of the updated ledgers relating to the clients detail within the original inspection schedule. Other information and documentation was requested, and the Respondent was required to make a further response by close of business on 14 January 2016 particularly in relation to a review of client balances, possible delay in recording of deeds, the firms true financial position, the firms trial balance, stale cheques, rendering of fees, cheque designations, and items to follow from previous correspondence. He was also required to obtain identification for Mrs L N and B B P Limited.
- 6.17 The Respondent did not reply until 1 February 2016.
- 6.18 On 4 February 2016 the Complainers emailed the Respondent and requested further information by close of business on 11 February 2016. On 10 February 2016 the Respondent emailed the Complainers and said that he had been off work for most of the week due to illness and requested more time. A further week was allowed. On 23 February 2016 the Respondent received an email from the Complainers pointing out that no response had been received, that preparations were in hand for the client protection sub-committee meeting of 3 March 2016, and that the respondent had until midday on 29 February 2016 to submit any comments which he wished the sub-committee to consider.
- 6.19 On 29 February 2016 the Respondent sent an email to the Complainers which attached additional vouching and indicated that he had asked his accountant to produce another copy of the spreadsheet showing the general expenses ledger. With a second email the Respondent that day sent what was described as vouching for the remaining files.
- 6.20 On 3 March 2016 the Complainers drew the attention of the Respondent to matters which were still outstanding and required a response by 12 noon on Monday 14

March 2016. On 3 March 2016 the client protection sub-committee determined to invite the Respondent to an interview to be held on 17 March 2016.

6.21 On 13 March 2016 the Respondent sent further information to the Complainers. On 14 March 2016 the Complainers drew attention to matters still outstanding, requiring a response by 16 March 2016. On 16 March 2016 the Respondent sent two emails to the complainers, attaching S G's ledger in the first and in the second indicating that he was not able to attend for interview. The Respondent did not attend for the interview on 17 March 2016. On 17 March 2016 the Scottish Solicitors Client Protection Fund determined that the Respondent's firm was to be re-inspected in November 2016, which was duly done. At that time no further action was deemed necessary.

7. After considering the amended Complaint and submissions made by both parties, the Tribunal did not consider that the Respondent's conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. The test for professional misconduct was not met. However, the Tribunal considered that the Respondent's actions may amount to unsatisfactory professional conduct and accordingly remitted the matter under Section 53ZA of the Solicitors (Scotland) Act 1980 to the Council of the Law Society of Scotland.

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

Edinburgh 18 June 2018. The Tribunal having considered the Complaint dated 30 January 2018 at the instance of the Council of the Law Society of Scotland against Michael Alastair Inkster, 159 Commercial Street, Lerwick; Find the Respondent not guilty of professional misconduct; Remit the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Make no finding of expenses due to or by either party; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other party.

(signed)

Benjamin Kemp
Acting Vice Chairman

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 *26 July 2018*.

IN THE NAME OF THE TRIBUNAL



**Benjamin Kemp
Acting Vice Chairman**

NOTE

On the morning of the Tribunal hearing the parties lodged a Joint Minute agreeing the averments of fact and duty contained within the amended Record.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal explained that the Complaint arose from an inspection of the Respondent's books and records in November 2015. The practice kept manual records. The information from the manual records was transferred onto Excel spreadsheets and printed out.

At the time of the inspection, the practice held 21 historic balances. These involved relatively small sums. Only three were in excess of £1,000. The Respondent provided an explanation to the Complainers regarding these.

The inspectors found that a number of cheques were found to be outstanding and uncashed. There had been a concern at the investigation stage that uncashed cheques made out to the Registers of Scotland might be indicative that deeds had gone unrecorded. However, after investigation it was confirmed that all deeds had been recorded. However, the outstanding cheques should have been cancelled and reissued.

The inspection revealed a number of debit balances amounting to £5,596.30 were not recorded on the firm's trial balance. The Respondent's books therefore did not accurately reflect the true financial position of the firm.

Further accounting errors were discovered. The inspectors have been unable to give a clear explanation as to why these matters had arisen. It was possible that they were due to an error in transcription between the manual records and the Excel spreadsheet.

The Fiscal went on to describe incidences where the Respondent had failed to undertake or retain or exhibit evidence of having undertaken customer due diligence in respect of the identity of clients and the source of funds. The Fiscal noted that these breaches were admitted, and the Respondent had given some explanation in his Answers.

The inspection also revealed that various cheques made payable to banks and building societies in respect of an executry were not designated. The Respondent had also failed to issue a statement of demands and needs and information letter in respect of an executry.

Inspectors selected for review firm nominal balances from the firm trial balance. It was not apparent how these balances were made up and the Respondent was unable to provide an explanation to the inspectors. He said his accountant would be able to do this.

The Fiscal noted that Rule B6.18.7 requires regulated persons to provide reasonable cooperation to their regulator. The Fiscal submitted that the Respondent had failed to provide reasonable cooperation. The inspectors indicated that the risks might merit submission of a report to the Client Protection Fund Sub Committee. The Respondent was sent an executive summary calling on him to provide a response within two weeks. On 30 November 2015 he sought and obtained an extension. On 6 January he advised by email he had investigated but due to pressures of work and a medical condition he had had insufficient time to respond completely although he did provide some information. On 7 January, the Law Society sent an email asking the Respondent to provide client bank reconciliations. He had been asked for these in November. On 14 January 2016, the Respondent was asked again. It was not until 1 February 2016 that he made a response. However, this did not satisfy the Complainers. They emailed again on 4 February 2016. The Respondent emailed on 10 February requesting more time. A reminder was sent to him on 23 February 2016. The Respondent responded on 29 February 2016. The Complainers sent him a reminder on 3 March regarding the matters which were still outstanding. Four months after the first request for information there were still matters outstanding. The Client Protection Sub Committee invited the Respondent for interview. There had been an improvement in the books and records of the firm and no further action was deemed necessary.

The Fiscal said that the Tribunal should be satisfied that the Respondent's conduct was serious and reprehensible in terms of the test in Sharp v Law Society of Scotland 1984 SLT 313. He conceded that the conduct was at the lower end of the scale. He noted there was a continuing failure to keep proper books and records and to deal with cheques, this having been brought to his attention in 2011. By the time of the inspection in November there were still 21 outstanding historic balances. He said it was significant that when the inspectors looked at the number of cheques and fact that some of these were for more than £1,000, the books and records of the firm were not up to date. This was serious and reprehensible. When considering the whole situation taken in the round with the failure to cooperate, he submitted that this was a case of professional misconduct. The Fiscal confirmed that he was seeking a *cumulo* finding in respect of all averments of professional misconduct. Although he had made reference

in the Complaint to the essential qualities of a solicitor being honesty, truthfulness and integrity, it was not alleged by the Complainers that there was an absence of honesty or integrity on the part of the Respondent. The Fiscal noted that if the Tribunal was not with him on this then it should consider remitting the matter back to the Complainers in terms of Section 53ZA of the 1980 Act.

SUBMISSIONS FOR THE RESPONDENT

Of consent, the Tribunal allowed the Respondent to lodge an affidavit from his wife. The affidavit confirmed that at the time of the inspection the Respondent was working without any secretarial cover. It also detailed the Respondent's medical condition and the impact this had on his work and daily life.

The Respondent explained that occasionally firms are left with small balances. He understood the reasons why the Law Society wanted solicitors to deal with these. However, the practical realities for sole practitioners are such that it is very difficult to give priority to historic balances. He said that these had not arisen wilfully. There were 21 balances raised out of tens of thousands of transactions over the last 25 years. They were generally very small. It was not the case that clients had been looking for these balances to be returned. Specifically, with regard to the three larger balances which the Fiscal had highlighted, the Respondent explained that in relation to the case of WB, he had been unable to get instructions from WB's children who were his executors. He had sent forms for them to sign on at least five occasions. He would like to disperse these funds but cannot do so at present within the Rules. In relation to the WH, the executry is largely completed and the historic balance should be dispersed. However, the Respondent suspects that the executor is incapax. It was not therefore possible to get instructions. In relation to the case of CH, the Respondent claimed that the funds were due to his firm in fees. He did not therefore think he should be criticised for his actions in these cases.

With regard to the outstanding cheques, the Respondent highlighted that all deeds had been recorded. All cheques were for small amounts and were few in numbers.

The Respondent noted that his firm's trial balances were prepared by an accountant. When the Complainers raised an issue with regard to debit balances in 2011 he referred this to his accountant. However, this was not something which the Complainers highlighted as a major problem and did not issue any reminders regarding this. He believed that the other accounting points were relatively minor and some were likely to be simple transcription errors.

With regard to the cheques drawn on the client bank which had gone out of date, the Respondent accepted that these should have been cancelled and reissued but urged the Tribunal to consider the context of a busy practice. It was very difficult to find time to deal with these. They were for very small sums, only one was for more than £100.

The Respondent conceded that he had made errors with regard to seeking identification and source of funds in certain conveyancing transactions. He noted that these had occurred in cases which were slightly unusual. In one case, a person had a beneficial interest in a property and even although she was not on the title deeds he should have obtained identification. This was a simple case of him not appreciating the Rules. It was not due to wilful disregard of them. He was now aware of the position and would seek identification in these circumstances again. He had sought identification for the other parties. In other cases, the people involved were very well known to the Respondent. He submitted that these were not flagrant breaches. He had made efforts to get the required identification and proof of the source of funds. However, in some cases he had not traced back far enough. He noted that clients can be very resistant to come forward with this information. It is not easy for practitioners to get everything they ask for.

The Respondent agreed that it is a useful practice to refer to the subject matter in the cheque. This would be his normal practice. However, his wife had been assisting him. She was also a signatory on the account. She had signed this particular one and he had not checked it. He claimed that this was an isolated incident.

With regard to the firm nominal balances, the Respondent said that he did not really understand what was required of him. He referred the matter to his accountant.

The Respondent made reference to the dictionary definition of “cooperation” which was the act of working together to the same end. He showed the Tribunal a bundle of paper which he said was five inches thick and represented the two-way correspondence between himself and the Law Society. He said that a lot of work had gone into extracting the information required by the Law Society. The Respondent said he simply could not produce what was asked of him within the timescale. It is clear from the terms of the Record that he was cooperating. If he had not been cooperating he would not have responded to the Law Society. What is reasonable in terms of cooperation must be looked at in the context of the massive pressure of work he was under. The Respondent described that although his wife had been acting as his secretary until late 2015, she went back to work as a teacher in early 2016. He therefore had no secretarial support at the office. He was liaising with the Law Society. Some things were relatively straightforward, and he was able to answer. Others, particularly the historical balances, were

monumentally difficult. It was hard to see how they had arisen. It was a complete nightmare and he claimed it was the worst period of his professional life. The Respondent explained to the Tribunal that he has a medical condition which is not going to resolve and which he has to manage. This makes it physically very difficult to work for long hours at a desk. He denied that he had ignored any reminders. He noted that he did ultimately produce all required information.

The Respondent indicated that he regretted not attending the Client Protection Sub Committee meeting. He said that he did not appreciate the significance of that meeting. He did tell them that he could not attend. He was on his own in the office and could not go to Edinburgh for two days with settlements pending. He could not see a way of attending that meeting and attending to his business. However, it was the Respondent's belief that he would not be before the Tribunal if he had attended the interview.

The Respondent said that his conduct was not perfect, but that was not the standard against which he was to be judged. He noted the Fiscal's clarification that there was no suggestion he had fallen short of his duties of honesty, truthfulness and integrity. He did not accept that the conduct amounted to professional misconduct individually or *in cumulo*.

The Respondent referred to the case of Law Society of Scotland-v-John Henry Adam. He noted the similarities between that case and the circumstances of his own Complaint. However, he submitted that the failures in the Adam case were more significant. There was a failure to provide basic things like balances and reconciliations, there was no schedule of VAT, several loans were not disclosed and there were numerous posting irregularities leading to the true financial position of the firm not being known for two years. That case also involved historic balances, cheques not returned by the bank and a deficit on the client account. It was the Respondent's submission that this case was much more serious than his yet the Tribunal had decided that the Respondent was not guilty of professional misconduct and instead remitted the case to the Law Society for consideration of unsatisfactory professional conduct.

The Respondent denied that there was a pattern of behaviour in his case. In his submission, the Complaint described a series of unrelated issues. The Respondent said that he would "honestly feel hard done by" if the Tribunal remitted the case to the Law Society to consider unsatisfactory professional conduct. He said that inspections would always pick up on something. No practice was absolutely compliant. The Respondent said that in many respects it was good to know where he had gone wrong. No one wants the stress of non-compliance. He now uses internet banking in the main rather than cheques. All debit balances have been cleared. He now makes sure that all calculations end in a zero balance. His accountant is on top of the trial balance issue.

The Fiscal made a motion to amend the Record. He had noted that there was no averment of professional misconduct regarding the failure to designate cheques. He therefore moved the Tribunal to insert the words "*Failure to designate cheques made payable to banks and building societies in respect of the late Mr JO's executry*" after sub paragraph 6 (iii) in the Record. The Respondent objected to the amendment. The Tribunal decided to consider the amendment during its deliberations.

DECISION

The Tribunal allowed the Fiscal's amendment. The motion for amendment had come at a very late stage but was technical in nature. The Respondent had fair notice of the facts and the misconduct alleged by the Complainers. He had admitted these. There was no prejudice to him in allowing the amendment.

The Tribunal considered the Joint Minute and considered the facts therein proved beyond reasonable doubt. The Tribunal considered the test for professional misconduct contained with Sharp-v-The Council of the Law Society of Scotland 1984 SLT 313 namely that:-

"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 ... 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 considered that the Respondent, by his admitted conduct, had breached several Rules. His accounting practices were not compliant with the Rules. He had failed to exercise due diligence with regard to identification of clients and the source of funds or wealth. His cooperation with the Law Society was not exemplary.

Breach of the Accounts Rules is generally a serious matter and will often constitute professional misconduct even in the absence of dishonesty. The Accounts Rules provide important protection for the public and solicitors. Careful regard to the Rules sustains public trust in the profession. Likewise, it is essential to prevent money laundering and other crimes that solicitors exercise due diligence with regard to identification of clients and source of funds. Cooperation with one's regulator is an important part of

belonging to a regulated profession. Failure to do so hampers the Law Society in the exercise of its duties and demeans the reputation of the profession.

However, in this case, the admitted breaches of the Rules were serious but not so grave that they could be described as reprehensible when considered in context. The Respondent described the background and gave good explanations, particularly for the three larger historical balances. The Respondent should have taken steps to deal with these. However, failure to do so was not reprehensible. In relation to the cheques, the Tribunal noted that the deeds had been registered so there was no mischief to the client. No harm was caused. The accounting discrepancies were the Respondent's responsibility even if he delegated to a member of staff or an accountant. However, these errors were minor. There was no financial risk to the Respondent, his firm or his clients. Rules were not systematically ignored over a sustained period. There was no dishonesty or lack of integrity. Instead, there was a lack of attention to detail. The Respondent had been sloppy. He had not maintained his professional responsibilities at that time. However, there had been a significant improvement in the Respondent's books and records and there were no matters outstanding.

The failures regarding due diligence arose as a result of an error on the part of the Respondent. It was not the case that he had failed to get evidence of identification or source of funds across the board. Rather, he had failed to do in unusual cases or in those where he knew the clients and was perhaps lulled into false sense of security.

With regard to compliance with one's regulator, the Tribunal considered this to be a serious charge which will often justify a finding of professional misconduct on its own. It was fair to say that the Respondent did not give the correspondence sufficient priority. He could have done more. Some responses were late. However, as detailed in the agreed facts, the Respondent did provide some cooperation and the question for the Tribunal was whether this was "reasonable". In the context of a busy practice, post-Christmas, when the Respondent was experiencing medical and staffing difficulties, it could not be said that he had failed to provide reasonable cooperation with the Law Society. He did not ignore the Complainers. He asked for extensions and provided responses and evidence. He was not obliged to attend the interview with the Client Protection Sub Committee.

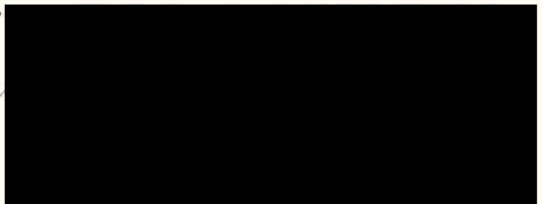
In all the circumstances the Tribunal was not prepared to find that the Respondent's departure from the standards of competent and reputable solicitors was serious and reprehensible. Therefore, having regard to all the circumstances and the degree of the Respondent's culpability, the Tribunal found him not guilty of professional misconduct.

The Tribunal considered that the case was on the boundary between professional misconduct and unsatisfactory professional conduct. It had regard to the guidance on unsatisfactory professional conduct provided in Hood-v-The Law Society of Scotland [2017] CSIH 21. In that case Lord Drummond Young said:

“Unsatisfactory professional conduct is measured against the standard of the competent and reputable solicitor...Unsatisfactory professional conduct lies on a spectrum that runs from professional misconduct at the more serious end to inadequate professional service at the lesser end and determining where the conduct complained lies on that spectrum is a question for evaluation by the relevant disciplinary tribunal, either the Council of the Respondents or the Scottish Solicitors Discipline Tribunal.”

The Tribunal considered that the Respondent had provided reasonable cooperation to the Complainers. However, the other conduct libelled fell short of the standards expected of competent and reputable solicitors. Although it was not serious and reprehensible, in general it had been unacceptable and may amount to unsatisfactory professional conduct. The Tribunal accordingly remitted the complaint under Section 53ZA of the Solicitors (Scotland) Act 1980 to the Council of the Law Society of Scotland for consideration.

Following submissions on expenses and publicity, the Tribunal ordered that no expenses should be have due to or by either party. The Tribunal had regard to Baxendale-Walker v Law Society [2011] EWHC 2254 (Admin). The present case lay close to the threshold between professional misconduct and unsatisfactory professional conduct. There was no criticism to be made of the Complainers who had properly brought the case before the Tribunal. Both parties had been partially successful. The decision will be given publicity in the usual way. However, other than those persons referred to in paragraph 14A of Schedule 4 to the Solicitors (Scotland) Act 1980, no third-party need be identified in the findings as publication of their personal data may be detrimental to their interests.



Benjamin Kemp
Acting Vice Chairman