

**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

**GORDON G McNAB, Stevenson Kennedy
Solicitors, Linnthu House, 19 Stevenson Street,
Oban**

1. A Complaint dated 25 April 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") averring that Gordon G McNab, Stevenson Kennedy Solicitors, Linnthu House, 19 Stevenson Street, Oban (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. He did not wish to claim compensation through the Tribunal in respect of this matter.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be heard on 4 September 2018 and notice thereof was duly served on the Respondent.
5. At the hearing on 4 September 2018, the Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.

6. A Joint Minute of Admissions was lodged. By means of said Joint Minute the parties agreed that the Respondent admitted the averments of fact, duty and misconduct contained within the Complaint. The parties also agreed that Productions 1-8 contained within the Inventory of Productions for the Complainers were true and accurate copies of the original documents and were what they bore to be. The Tribunal heard submissions from both parties.
7. Having given careful consideration to the terms of the Complaint, the Joint Minute of Admissions, the Productions for the Complainers and the parties' submissions, the Tribunal found the following facts established:-

- 7.1 By letter dated 20 January 2016 the Secondary Complainer wrote to the Respondent inter alia enclosing three Mandates instructing the transfer of all papers in respect of himself, his wife and his son to MacPhee & Partners Solicitors.

The Respondent replied by letter dated 25 January 2016 acknowledging the Mandates and confirming he would "get everything sent over to MacPhee & Partners." He also advised he would send files to the Law Accountant so that they could be fee'd to date.

- 7.2 By letter dated 11 October 2016 the Secondary Complainer wrote to the Respondent referring to his letter of January 2016, the Respondent's reply to the effect papers had been sent to the Law Accountants and advising that "nine months down the track we are still waiting."

- 7.3 Having heard nothing from the Respondent, the Secondary Complainer phoned the Respondent's office on 5 January 2017. He was promised the files within seven days.

By letter dated 5 January 2017 the Secondary Complainer wrote to the Respondent confirming the telephone conversation.

In the continuing absence of any response from the Respondent, the Secondary Complainer wrote to the Respondent on 26 January 2017 referring to the Respondent's letter of 25 January 2016 and requesting the files.

- 7.4 The Secondary Complainer made a complaint in respect of the Respondent's conduct to the Scottish Legal Complaints Commission (SLCC) on or around 13 February 2017.

The SLCC decided that the complaint was an eligible conduct complaint and on 12 July 2017 referred the complaint to the Complainers.

The Secondary Complainer's complaint was that:-

1. "Mr McNab and/or Stevenson Kennedy Limited unduly delayed/failed to fully comply with a joint mandate sent in January 2016 by me, my wife and my son instructing him/them to transfer all our files, Title Deeds and Wills to my new Solicitors, in that the Title Deeds to Property 1 and Property 2, both in Oban, the Title Deeds to three garages I purchased in Oban, an additional piece of land behind the garages in Oban and the files relating to the sale and division of land at Property 3 are all missing from the files he transferred to my new Solicitors on 8 March 2017.
 2. Mr McNab and/or Stevenson Kennedy Limited failed to respond to my letter dated 11 October 2016.
 3. Mr McNab and/or Stevenson Kennedy Limited failed to respond to my letter dated 26 January 2017."
- 7.5 By letter dated 13 July 2017 the Complainers wrote to the Respondent intimating a complaint and requesting the Respondent provide a response within a period of twenty-one days.
- 7.6 The Complainers investigated the matter and prepared a Report, a copy of which was provided to the Respondent by the Complainers by letter dated 11 January 2018 together with intimation that the complaint would be considered by a Professional

Conduct Sub Committee. A Supplementary Report was prepared and a copy provided to the Respondent by the Complainers by letter dated 7 February 2018.

- 7.7 On 8 March 2018 the Complainers' Professional Conduct Sub Committee considered the Complaint.

The Sub Committee determined that the Respondent's conduct in respect of the Secondary Complainer's complaint that:

1. "Mr McNab unduly delayed/failed to fully comply with a joint mandate sent in January 2016 by me, my wife and my son instructing him/them to transfer all our files, Title Deeds and Wills to my new Solicitors, in that the Title Deeds to Property 1 and Property 2, both in Oban, the Title Deeds to three garages I purchased in Oban, an additional piece of land behind the garages in Oban and the files relating to the sale and division of land at Property 3 are all missing from the files he transferred to my new Solicitors on 8 March 2017.
2. Mr McNab failed to respond to my letter dated 11 October 2016.
3. Mr McNab failed to respond to my letter dated 26 January 2017."

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor; that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

Further, the Sub Committee determined that a Fiscal should be appointed in terms of Section 51 of the Solicitors (Scotland) Act 1980 to prosecute the Respondent before the Scottish Solicitors Discipline Tribunal.

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

- 8.1 He unduly delayed/failed to fully comply with a joint mandate sent in January 2016 by the Secondary Complainer, his wife and his son to transfer all their files, title deeds and wills to his new solicitors, in that the title deeds to Property 1 and Property 2, both in Oban, the Title Deeds to three garages he purchased in Oban, an additional piece of land behind the garages in Oban and the files relating to the sale and division of land at Property 3 were all missing from the files he transferred to the Secondary Complainer's new Solicitors on 8 March 2017;
- 8.2 He failed to respond to the Secondary Complainer's letter dated 11 October 2016; and
- 8.3 He failed to respond to the Secondary Complainer's letter dated 26 January 2017.

9. Having heard further submissions from the parties, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 4 September 2018. The Tribunal having considered the Complaint dated 25 April 2018 at the instance of the Council of the Law Society of Scotland against Gordon G McNab, Stevenson Kennedy Solicitors, Linndhu House, 19 Stevenson Street, Oban; Find the Respondent guilty of professional misconduct in respect of (1) his undue delay or failure to fully comply with the joint mandate sent to him in January 2016 by the Secondary Complainer, his wife and his son to transfer all their files, title deeds and wills to his new solicitor, (2) his failure to respond to the Secondary Complainer's letter dated 11 October 2016 and (3) his failure to respond to the Secondary Complainer's letter dated 26 January 2017; Censure the Respondent; 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 but need not identify any other person.

(signed)

Colin Bell

Vice Chairman

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

IN THE NAME OF THE TRIBUNAL



Colin Bell
Vice Chairman

NOTE

At the hearing on 4 September 2018, the Tribunal had before it a Complaint, a Joint Minute of Admissions and an Inventory of Productions for the Complainers.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal acknowledged that despite the Joint Minute of Admissions admitting all averments of fact, duty and misconduct, the Tribunal had to be satisfied that the circumstances amounted to professional misconduct in terms of Sharp v The Council of the Law Society 1984 SLT 313. The Fiscal explained that the admitted facts showed that the Respondent had failed to implement a mandate from January 2016 to March 2017. He had also failed to respond to two letters from the Secondary Complainer dated 11 October 2016 and 26 January 2017. The material which was ultimately transferred to the Secondary Complainer's new agents was not in full implement of the mandate. There was no acceptable reason for the failure to implement the mandate. The Fiscal noted that the Complainers accepted the explanation to be given on the Respondent's behalf regarding two pieces of work involving the Secondary Complainer which his firm was still undertaking. The Fiscal invited the Tribunal to make a finding of professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath indicated that the Respondent consulted him in December 2017. Prior to that, the Respondent had set out his position to the Law Society in his letter of 4 August 2017 (Production 8). The Respondent accepted that the Secondary Complainer had written to him on 20 January 2016 (Production 2) asking for papers to be sent to another firm. The Respondent acknowledged this letter on 25 January 2016 (Production 3) and indicated he would comply with the mandate. However, he failed to do so for many months. He had asked his receptionist to deal with the matter but accepts that he was responsible for her supervision and the processes within the office whereby files and documents are managed. Every firm needs a system for safe keeping of documents and titles. Mr Macreath noted that the Respondent does not seek to blame his receptionist, merely explain what had happened.

The Respondent dealt timeously and appropriately with the SLCC when the Secondary Complainer had made a complaint. The Respondent had been "worried sick" about the complaint. Mr Macreath explained that the Respondent's firm was continuing to deal with two outstanding matters relating to the Secondary

Complainer's affairs and provided details of these. Mr Macreath had given the Respondent certain advice regarding this work. Mr Macreath noted that the Law Society case investigator had recommended a finding of unsatisfactory professional conduct but the Law Society Professional Sub Committee had referred the matter to a Fiscal because the Tribunal had previously found that solicitors must comply with mandates as soon as is reasonably practicable.

DECISION

Although the Respondent admitted professional misconduct, it remained for the Tribunal to consider whether the admitted conduct met the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313. There are certain standards of conduct to be expected of competent and reputable solicitors and 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.

The Respondent had failed to implement mandates over a 14 month period. He also failed to communicate effectively with the Secondary Complainer by failing to respond timeously to the Secondary Complainer's telephone calls and letters. The Tribunal had regard to previous decisions of the Tribunal regarding mandates. In particular, it noted in Council of the Law Society of Scotland-v-Corrigan (636/84) that it is the privilege of a client that he can terminate his solicitor's agency at any time and subject to any matter of outstanding fees, it is the former solicitor's duty in such circumstances to comply without question and as soon as practicable with any request or instruction by that client for the delivery of papers which might be regarded as belonging to that client. The Respondent did not claim any lien in this case although the Tribunal did note from the terms of Production 3 that fees may have been due to the Respondent's firm. Where there is a change of solicitor and papers require to be delivered, it is most common for the new solicitor to prepare a mandate which is signed by the client and sent on to the former solicitor for implementation. On many occasions however, the authority of the new solicitor is respected without the formality of a mandate or, as in this case, the client's request for delivery of papers is contained within a simple letter written direct to the former solicitor. Whatever the circumstances, the former solicitor is retaining papers which are no longer those of a client and provided there is sufficient evidence of the client's authority, it is his duty to comply with any relevant request. It is a solicitor's duty to effect delivery as soon as is practicable. The new solicitor will not have the same knowledge of the client's affairs and it is appropriate that he should have access to papers to assist him in advising the client.

This Tribunal has held on many occasions that failure to implement timeously a mandate is professional misconduct. In addition in this case, the Respondent had failed to communicate effectively with his client. The Respondent's failures in this case were a serious and reprehensible departure from the standards of a competent and reputable solicitor. Therefore, he was guilty of professional misconduct.

SUBMISSIONS IN MITIGATION

Mr Macreath provided testimonials supplied by senior members of the profession in support of the Respondent. He described the Respondent's charity, community and *pro bono* work. He also alluded to the difficult business and personal circumstances the Respondent was experiencing at the time of the professional misconduct. The Respondent had been very stressed during this period. The Respondent is 60 years old this year. He has worked in Oban for most of his professional life and is known there for his diligence and hard work. He responded to the Law Society a year ago in candid terms regarding the circumstances of this offence. Mr Macreath asked the Tribunal to consider leniency. The impact on him of the publicity alone will be material.

DECISION ON SANCTION

The Respondent failed to implement the mandate for a significant period. The Respondent had opportunities to resolve the situation many times and it is regrettable that he did not do so until a complaint was made. The Tribunal considered that the professional misconduct in this case was at the lower end of the scale. It was restricted to one client and appeared to be an isolated incident. The issue was not one which reflected on the Respondent's integrity. The Tribunal had regard to the Respondent's personal circumstances, the early plea of guilt, the Respondent's obvious remorse, the respect he showed the Tribunal by attending in person and the corrective steps he has taken belatedly to resolve matters. The Tribunal did not consider that there was any risk to the public and there was therefore no requirement for supervision. The Tribunal was satisfied that a Censure was sufficient to mark the gravity of the offending in these circumstances.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. 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. It was confirmed by both parties that the Secondary Complainer did not seek compensation with regard to this matter.



Colin Bell
Vice Chairman