THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)

F I N D I N G S

in Complaint

by

THE COUNCIL OF THE LAW SOCIETY of SCOTLAND, Atria One, 144 Morrison Street, Edinburgh

against

JAMES PURVIS, 6 Blair Road, Blairhill, Coatbridge

1. A Complaint dated 14 July 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that James Purvis, 6 Blair Road, Blairhill, Coatbridge (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.

2. There are two Secondary Complainers, Mr A and Mr B.

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 18 September 2017 and notice thereof was duly served upon the Respondent.

5. The hearing took place on 18 September 2017. The Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented himself.

6. A Joint Minute was lodged admitting the facts and averments in the Complaint. No evidence was led.

7. The Tribunal found the following facts established: -

7.1 The Respondent is James Hamilton Purvis. He resides at 6 Blair Road, Blairhill, Coatbridge, Lanarkshire. The Respondent was born on the 31 March 1961. The Respondent was enrolled and admitted as a solicitor on the roll of solicitors practising in Scotland on 28 November 1985. From on or about 28 September 1990 through to 31 October 2014 the Respondent was initially employed then associate and latterly a partner in the firm Grant & Wylie Solicitors Glasgow. From 1 November 2014 through to 9 June 2015 the Respondent was employed in the role of consultant with the firm PRP Legal Limited, Glasgow. From 1 July 2015 through to 1 April 2016 the Respondent was employed by the firm Nicholson O'Brien Solicitors, Airdrie.

7.2 Mr A and Mr B had an interest in a company known as Company 1. Mr B was a director of the company. Mr A was not. The company was dissolved on 25 September 2009. Following dissolution, the company held funds to the extent of £13,839.77 with the Bank of Scotland plc. The bank passed the company funds to the Queen's and Lord Treasurer's Remembrancer (QLTR). It is believed that the monies were paid into the company bank account by Mr A. The funds were deposited with the bank after the dissolution of the company as a consequence of which Mr A was not a creditor of the company and therefore did not have the necessary title in order to petition for restoration of the company to the Company Register. Mr B as a director of the company prior to dissolution did have title to petition for restoration of the company.

7.3 On 24 August 2011 Mr A instructed the Respondent to act on his behalf. At the material time the Respondent was a partner of the firm Grant & Wylie Solicitors Glasgow. This instruction followed Messrs A and B consulting with another firm who had written to the QLTR enquiring regarding repayment of the money. On 12 October 2010 the QLTR replied advising that they would not waive their right to the funds but would consider a discretionary payment of up to £3,000. That was not acceptable to Messrs A and B. On 27 June 2011 the QLTR advised that in order to recover the full sum Messrs A and B would require to petition the Court to have the company restored to the Company Register.

7.4 Mr A met with the Respondent on 24 August 2011. The Respondent took notes of the meeting. The notes are sparse and brief. The Respondent advised Mr A that he would instruct an advocate to act on his behalf with a view to restoring the company to the Register in an effort to recover the monies due.

7.5 A review of the file maintained by the Respondent revealed that on 20th September 2011 he telephoned an advocate who agreed that he would accept instruction by email. On 20 September 2011 the Respondent intimated an email to the advocate to discuss a possible application to restore the company to the Companies Register. Nothing was heard from the advocate. The Respondent again contacted the advocate by email on 4 November 2011. He received no response. On 24 November 2011 Mr A called the Respondent to obtain an update. Following that call the Respondent emailed the advocate again on 24 November 2011 and once more on the 13 December 2011 and received no reply.

7.6 On 5 March 2012 Mr B telephoned the Respondent to obtain an update. On 6 March 2012 the Respondent sent an email to the advocate asking for progress. There was no reply and the Respondent did nothing further until 22 May 2012 when he received another telephone call from Mr B enquiring as to progress. The Respondent then emailed the advocate on 24 May 2012 enquiring as to progress. On the 30 May the Respondent spoke to the advocate by telephone. The advocate advised he had not received any correspondence. On 1 June 2012 the Respondent sent a letter to the advocate enclosing copies of the correspondence which he had previously intimated. On 12 June 2012 Mr B called the Respondent asking for an update. The Respondent emailed the advocate on 12 June 2012 asking for progress. On 25 June 2012 Mr B telephoned the Respondent asking for an update. On 11 July 2012 Mr B called again and the Respondent advised he was pressing Counsel and that he would be in touch as soon he had heard from him. The Respondent sent an email to the advocate dated 11 July 2012 asking for an update.

7.7 On 26 July 2012 the advocate replied looking for more information surrounding the circumstances which led to the company being removed from the Register. The client telephoned on 30 July 2012 asking for an update. On 30 July 2012 the client sent documentation answering the questions raised by the advocate. The Respondent delivered the documentation to the advocate on the 6 August 2012.

On 13 September 2012 the client called and asked for an update. On 13 September 2012 the Respondent emailed the advocate asking for progress. On 1 October 2012 the Respondent emailed the advocate asking for progress. On 8 November 2012 the Respondent emailed the advocate asking for progress. On 21 November 2012 the advocate replied indicating he had not received a response to his enquiry of 26 July 2012.

7.8 On 22 November 2012 a draft petition for restoration was sent to Mr B. The client confirmed it was in order. On 26 November 2012 the Respondent contacted the advocate to advise him of this. On 15 January 2013 the Respondent sent an email to the advocate asking for progress. On 18 January 2013 the client called for an update. On 7 February 2013 the client called asking for an update. On 8 February 2013 the Respondent sent an email to the advocate asking for progress. On 20 February 2013 the client called asking for an update. On 21 February 2013 the Respondent sent an email to the advocate asking for progress. The advocate replied suggesting a meeting to discuss matters. The Respondent emailed the advocate on 22 March 2013 enquiring whether the meeting should include the clients. On 5 April 2013 the Respondent emailed the advocate looking for an update. On 9 April 2013 the advocate referred to a list of information he required in order to progress matters. The Respondent sent the list to the client on 9 April 2013.

7.9 A reply was received from the client on 15 April 2013 enclosing the documentation received from the client. On 26 April 2013 the Respondent spoke to the advocate and noted the matter could be dealt with by way of petition to the Sheriff Court. A company search was instructed and received by the Respondent on 25 April 2013. The details of the search were forwarded to the advocate on 29 April 2013. The client called on 1 May 2013 asking for an update. The Respondent spoke with the client when he called again on 18 June 2013. The client was becoming increasingly anxious about the absence of progress. The client called again on 10 July 2013 asking for an update, the advocate prepared a draft petition dated 13 July 2013 and advised that he required further information in order to complete the draft. The Respondent replied on 16 July 2013 that he should be able to proceed when he had the information sought from his clients. This was followed on 17 July by a letter from the Respondent to the client. The

client telephoned that day. The client was anxious as to the potential exposure to expense. A note on the file maintained by the Respondent revealed that he indicated to the client that the costs would be "a couple of grand". The final communication on the file is an email from the Respondent to the advocate dated 26 November 2013.

7.10 When the clients consulted the Respondent he did not forward to them a terms of business letter nor did he do so at any stage throughout the currency of his employment.

7.11 The Respondent having instructed Counsel on 20 September 2011 failed to report or make communication with his client. The only occasion the Respondent took action was generated in response to a call from the client asking for an update. As consequence of which during the currency of his employment the Respondent's inactivity measured on occasion 12 weeks, 11 weeks, 3 weeks, 2.5 weeks, 5 weeks, 5 weeks, 8 weeks, 3.5 weeks, 2 weeks, 8 weeks, 3,5 weeks, 2 weeks, 4 weeks, 2 weeks, 5 weeks, 3 weeks and 19 weeks. In total the amount of inactivity allowed by the Respondent amounted to a period in total of 90 weeks. Mr B telephoned the Respondent on 16 occasions between 5 March 2012 and 17 July 2013 seeking progress to no avail.

7.12 A review of the file maintained by the Respondent revealed he did not contact both complainers following taking instructions. After initially dealing with Mr A he spoke and wrote only to Mr B from 22 May 2012. During that period, he did not discuss the matter of fees or costs with the clients at all either at the outset of the transaction or during the currency of his employment until the matter was raised by Mr B by his telephone call on 17 July 2013. An application to have the company restored to the Register became time barred on 25 September 2015. No application was ever submitted by the Respondent as a consequence of which the money was lost.

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

8.1 His failure to communicate effectively with his client in breach of Rule 9 of the 2008 Rules and Rule B1.9.2 of the 2011 Rules to the extent that he failed to seek sufficient information from his client to allow him to lodge the application for restoration of a company to the register; and

8.2 His failure to act in the best interests of his client in breach of Rule 3 of the 2008 Rules and Rule B1.4.1 of the 2011 Rules to the extent that he did not lodge the application for restoration of a company to the register before the time bar.

9. Having heard the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 18 September 2017. The Tribunal having considered the Complaint dated 14 July 2017 at the instance of the Council of the Law Society of Scotland against James Purvis, 6 Blair Road, Blairhill, Coatbridge; Find the Respondent guilty of professional misconduct in respect of his failure to communicate effectively with his client in breach of Rule 9 of the 2008 Rules and Rule B1.9.2 of the 2011 Rules to the extent that he failed to seek sufficient information from his client to allow him to lodge the application for restoration of a company to the register and in respect of his failure to act in the best interests of his client in breach of Rule 3 of the 2008 Rules and Rule B1.4.1 of the 2011 Rules to the extent that he did not lodge the application for restoration of a company to the register before the time bar; 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; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but should not identify any other person; and allow the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with the office of the Tribunal.

(signed)
Alan McDonald
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 5 OCTOBER 2017.

IN THE NAME OF THE TRIBUNAL

[redacted]

Alan McDonald

Vice Chairman

NOTE

A Joint Minute was lodged admitting the facts and averments in the Complaint. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal told the Tribunal that the Respondent was a 56 year old man who had practised as a solicitor for 32 years. The subject matter of the Complaint involved a company called Company 1. Mr A and Mr B both had an interest in the company. Mr B was a director of the company. Mr A was not. In September 2009 Company 1 was dissolved. Mr A paid in money to the company bank account after dissolution and so was not a creditor of the company. £13,839.77 was paid to the QLTR.

The Respondent was instructed in August 2011 and he instructed counsel in September 2011. However, thereafter, progress was only ever made on the file at the prompting of the client. The advocate provided a draft application but the Respondent did not complete this or lodge the application. The file was closed in November 2013 without anything being achieved. The Law Society is concerned that no terms of business letter was ever issued to the client. There was an absence of reporting to the client. The only activity by the Respondent was at the client's prompting. There was a lengthy delay where nothing was done. The case became time barred on 25 September 2015 without the matter being resolved. The Fiscal submitted that the circumstances were sufficient to amount to professional misconduct. He noted that it was not the most common kind of professional misconduct but drew the Tribunal's attention to paragraph 1.26 of Paterson and Ritchie's "Law, Practice and Conduct for Solicitors" (2nd Ed. 2014) which states that the Tribunal had concluded that provided the failure was egregious enough, negligence, delay, carelessness or incompetence could amount to misconduct. He submitted that months of inactivity were serious and reprehensible and could amount to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

The Respondent explained that he mainly did conveyancing work but his firm fell on hard times during the recession. The Secondary Complainers were existing clients. He had done conveyancing work for them in the past and they asked him to do this piece of work. His partner would normally have handled this type of business but at that time he was ill and absent from work. The Respondent recognised that he was not an expert in this field and that is why he sought Counsel's opinion. This took pressure off him in a way but unfortunately he had to keep chasing the advocate. He felt let down by the advocate but said that he accepted responsibility for his actions and acknowledged that he had "taken his eye off

the ball". He did not take any issue with the factual matters narrated in the Complaint. The files were with the new firm and he did not have access to them.

In answer to questions from the Tribunal members, the Respondent indicated that the advocate provided the draft petition to him in July 2013. Counsel had by that time dealt with all matters in which he was instructed. He had been instructed to draft the application but the Respondent intended to lodge it and deal with the court appearances himself. Counsel informed the Respondent of the additional information he had to obtain from the clients before lodging the application. The Respondent failed to gather the extra information due to the personal and business pressures he was experiencing at the time. The Respondent left PRP in June 2015 and the case was not time barred at that stage.

DECISION

The Tribunal noted that the case raised some issues which were not the subject of specific averments of misconduct in the Complaint. These included identifying who was the client and taking instructions by proxy without a mandate. The Tribunal did not include these in their decision-making as they were not the subject of specific averments of misconduct.

The Tribunal considered carefully the admitted averments of fact in the Complaint. The Tribunal had regard to the test for professional misconduct as defined in Sharp v Council of the Law Society of Scotland 1984 SLT 313. In *Sharp* it was emphasised that a serious and reprehensible departure from the standards of conduct to be expected 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 it made.

Through total lack of activity on the file the Respondent allowed a case to become time barred. Although it was clear there were problems obtaining the drafted application from the Advocate, it was in the Respondent's possession in July 2013. Subsequently, he failed to gather the relevant information identified by the Advocate which would have allowed the Respondent to lodge the document at the Sheriff Court. His failure to get the required information from the client to complete the application was a breach of his obligation to communicate effectively with his client. By failing to take any steps to obtain the information and lodge the application, the Respondent breached his obligation to act in his clients' best interests. These failings breached the relevant rules and represented a serious and reprehensible departure from the standards expected of competent and reputable solicitors.

Rule B1.10 of the 2011 Rules and Rule 10 of the 2008 Rules provide that a solicitor must only act in those matters where the solicitor is competent to do so. A solicitor must only accept instructions where the matter can be carried out adequately and completely within a reasonable time. A solicitor must exercise the level of skill appropriate to the matter. The Tribunal did not consider that the Respondent breached this rule. The Tribunal accepted that the Respondent sought Counsel's assistance because he identified that he did not have sufficient expertise to draft the application but that he should have been able to deal with the matter if he had obtained the necessary information.

Rule B4.2(b) of the 2011 Rules and Rule 3 of the Solicitors (Scotland) (Client Communication) Practice Rules 2005 provide that solicitors must provide a "terms of business" letter. The Respondent's failure to provide a terms of business letter and his indication a significant time after he had accepted the case that the fees were likely to be "a couple of grand" breached these rules. However, the Tribunal considered that this single instance was not so serious and reprehensible that it amounted to professional misconduct.

MITIGATION

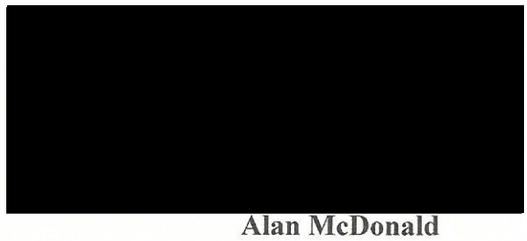
The Respondent highlighted that the Complaint had been hanging over him for quite a long time. He knew that the circumstances giving rise to the Complaint existed when his firm was taken over and this has been a worry for him since then. He explained that his firm had suffered during the recession. He mainly did conveyancing work and he felt a lot of pressure at that time. On reflection, he could see that he was tempted to do a piece of work which he might ordinarily have passed on to another solicitor. However, his partner was ill. The Respondent put all of his life savings into the firm in the hope that he could turn it around but that did not happen. His mind was on other things and he thought he still had plenty of time so he put the case to one side. He accepted that this was not an excuse and he should have dealt with the matter. He asked the Tribunal to deal with him as leniently as possible. All his money went into his firm. He had not worked for several months and only earned a small amount last year. However, he was hopeful of getting a position with another firm doing conveyancing, wills, trusts and executries work.

PENALTY

The Tribunal considered what the Respondent had said in mitigation and determined that the appropriate sanction was a Censure. The matter was an isolated incident. The Respondent had accepted his guilt and had reflected on what had gone wrong. There were no previous findings of professional misconduct

which required to be taken into account. He cooperated with the Fiscal and entered into a Joint Minute. The Tribunal did not consider the Respondent to be a risk to the public and there was no requirement for supervision. He was seeking work in the field of his experience which showed some insight into the circumstances which led to the present Complaint.

After inviting submissions on expenses and publicity, the Tribunal found the Respondent liable in the expenses of the Complainers and the Tribunal. The Tribunal ordered that publicity should be given to the decision but only the Respondent required to be identified because publication of personal data is likely to damage other individuals' interests. The Tribunal allowed the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with Tribunal Office.



Alan McDonald

Vice Chairman