

**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**

**Complainers**

**against**

**DESMOND WILLIAM DONOGHUE, 1F2, 408  
Morningside Road, Edinburgh**

**Respondent**

1. A Complaint dated 24 August 2021 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 Desmond William Donoghue, 1F2, 408 Morningside Road, Edinburgh (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Secondary Complainer did not seek compensation in these proceedings.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent at this time.
4. In terms of its Rules, the Tribunal set the matter down for a virtual procedural hearing for 1 November 2021 and notice thereof was duly served upon the Respondent.
5. At the virtual procedural hearing on 1 November 2021, the Complainers were represented by their Fiscal, James Campbell, Solicitor, Edinburgh. The Respondent was present by telephone and represented himself. The Tribunal continued the virtual procedural hearing to 7 December 2021 and allowed the Respondent 14 days to lodge Answers.

6. Notice of the virtual procedural hearing was served upon the Respondent. Parties lodged a Joint Minute with the Tribunal.
7. At the continued virtual procedural hearing on 7 December 2021, the Complainers were represented by their Fiscal, James Campbell, Solicitor, Edinburgh. The Respondent was present by telephone and represented himself. The Tribunal fixed a virtual hearing for 23 February 2022. Notice thereof was duly served upon the Respondent.
8. At the virtual hearing on 23 February 2022, the Complainers were represented by their Fiscal, James Campbell, Solicitor, Edinburgh. The Respondent was present by telephone and represented himself. Parties made submissions.
9. Having given careful consideration to the submissions and documents before it, the Tribunal found the following facts established:-
  - 9.1 The Respondent is Desmond William Donoghue. He was born on 12 August 1957. He was enrolled and admitted as a solicitor on 21 November 1991. He was employed by Glenrothes Development Corporation from 1 November 1991 until 29 March 1996, McQuittys from 23 April 1996 until 14 February 1997, Falkirk Council from 5 May 1997 until 9 April 1998, Smith Grant from 15 February 1999 until 31 August 2004 (becoming partner on 1 September 2001), and The PSM Law Group from 20 June 2005 until 27 February 2006. He was a partner of Ide Legal from 8 June 2006 until 31 October 2019. Amongst other roles he was the Cashroom Partner at Ide Legal from 7 February 2007 until 31 October 2019. The Respondent retired from practice on 31 October 2019.
  - 9.2 On or around 4 March 2019 the Secondary Complainer instructed the Respondent to act for him in the purchase of a property. The transaction concluded on 2 August 2019. Following conclusion of the transaction, the Respondent's firm's client account held funds pertaining to the Secondary Complainer amounting to £12,722.86. £12,100.00 was due to Revenue Scotland in respect of Land and Buildings Transaction Tax (LBTT) pertaining to the purchase. The relevant return and funds required to be lodged with Revenue Scotland by 1 September 2019.

- 9.3 On 3 October 2019, the Secondary Complainer received correspondence from Revenue Scotland (erroneously dated 2 September 2019) stating that the LBTT had not been paid by the due date. Revenue Scotland issued the Secondary Complainer with a penalty charge of £100 plus interest on the unpaid tax of £2. The LBTT remained unpaid.
- 9.4 On 3 October 2019, the Secondary Complainer telephoned the Respondent with no reply.
- 9.5 On 4 October 2019, the Secondary Complainer wrote to the Respondent and the seller's agent asking to discuss settlement of the tax and penalty. The Respondent did not respond to the Secondary Complainer.
- 9.6 The Secondary Complainer telephoned the Respondent on 4, 8, 9 and 31 October 2019 with no reply.
- 9.7 On 1 November 2019, the Secondary Complainer wrote to the Respondent requesting he arrange settlement of the tax, penalty and interest. The Respondent did not respond.
- 9.8 On 12 December 2019, a Judicial Factor was appointed to the firm on an interim basis. At the date of that appointment the £12,100.00 due to Revenue Scotland in respect of LBTT remained unpaid. The Respondent failed to pay or unduly delayed in paying the LBTT despite being in funds to settle the tax bill with Revenue Scotland. On 30 June 2020 the appointment of the Judicial Factor was made permanent.
- 9.9 On 15 January 2020, the Law Society of Scotland wrote to the Respondent intimating the conduct complaint, enclosing a copy of papers from the Scottish Legal Complaints Commission and directing the Respondent to the complaint contained therein. It was explained that the Council had a statutory duty to investigate the complaint and that the Respondent had a professional obligation to respond. The Respondent was requested to respond within 21 days with: his position in respect of the complaint; his business files and ledger cards relating to the matter; and any other relevant information. The correspondence stated that,

should no response be received, Notices in terms of section 48 of the Legal Profession and Legal Aid (Scotland) Act 2007 and section 15 of the Solicitors (Scotland) Act 1980 would be issued. The correspondence stated that that the Council may intimate a further conduct complaint in respect of any failure or delay in the Respondent responding. No response was received from the Respondent.

9.10 ●n 20 February 2020 s15 and s48 Notices were served on the Respondent by Recorded Delivery Post and email. The Notices stated that, were the Respondent to fail to respond within 21 days, a further conduct complaint would be submitted to the Scottish Legal Complaints Commission in relation to the Respondent's failure to provide relevant documentation/explanation and/or their failure to respond to the Law Society. The delivery was signed for by "McMorland" on 21 February 2021. No response was received from the Respondent.

9.11 ●n 6 April 2020, the Society emailed the Respondent advising of an additional complaint arising from his failure to respond to the Society's correspondence.

9.12 ●n 22 May 2020, the Society intimated the complaint of failing to respond to the Society to the Respondent. No response was received from the Respondent.

9.13 The Respondent failed to cooperate with the Law Society's investigation in respect of its complaint. He failed to respond to correspondence sent to him including formal Notices.

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

- (a) As designated cashroom manager, failed to disburse a client's balances held by his firm when there was no longer any reason to retain them; and
- (b) Failed to respond to correspondence and statutory notices received from the Council in respect of its regulatory function, impeding the Council in its statutory obligation to investigate complaints.

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

By Video Conference, 23 February 2022. The Tribunal having considered the Complaint dated 24 August 2021 at the instance of the Council of the Law Society of Scotland against Desmond William Donoghue, 1F2, 408 Morningside Road, Edinburgh; Find the Respondent guilty of professional misconduct in respect that he (a) as designated cashroom manager, failed to disburse a client's balances held by his firm when there was no longer any reason to retain them; and (b) failed to respond to correspondence and statutory notices received from the Council in respect of its regulatory function, impeding the Council in its statutory obligation to investigate complaints; 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**  
**Chair**

11. A copy of the foregoing together with a copy of the Findings certified by the Clerk to the Tribunal as correct were duly sent to the Respondent by recorded delivery service on 16 MARCH 2022.

IN THE NAME OF THE TRIBUNAL



Colin Bell

Chair

## NOTE

At the virtual hearing on 23 February 2022, the Tribunal had before it: the Complaint; a Joint Minute of Admissions; a List of Authorities for the Complainers; a letter from the Respondent dated 5 November 2021; and an email and letter from the Respondent dated 6 December 2021. The Joint Minute agreed all the averments of fact, duty and misconduct contained in the Complaint. Parties confirmed that they wished the Tribunal to dispose of the matter at the hearing.

## SUBMISSIONS FOR THE COMPLAINERS

The Fiscal invited the Tribunal to find the agreed facts established. He described the Respondent's conduct. He set out the duties of a solicitor and the relevant Practice Rules. The Complainers averred a breach of Rule B1.2 to the extent of a lack of integrity (but not dishonesty). The Fiscal referred to the definition of lack of integrity contained in Wingate & Evans-v-SRA: SRA-v-Malins [2018] EWCA Civ 366.

The Fiscal invited the Tribunal to find the Respondent guilty of professional misconduct. In his submission, the Sharp test was met. The Respondent's conduct would have a negative impact on the reputation of the profession. Solicitors should be of unquestionable integrity. Lack of integrity can cover acts and omissions. Being part of a profession has many benefits, but individuals must comply with the profession's Rules and Codes of Conduct. Client funds should be sacrosanct. The Respondent's conduct amounted to a significant failure to comply with professional standards and the public's expectations.

The Fiscal noted that the Secondary Complainer had confirmed to him in writing on 30 November 2021 that he did not wish to seek compensation through these proceedings.

## SUBMISSIONS FOR THE RESPONDENT

The Respondent said he was not sure whether or not he was still on the Roll of Solicitors in Scotland. He had not paid to stay on the Roll. He had no money. The Respondent said he had no access to files or accounts. He did not recall failing to pay the LBTT. The matter was not drawn to his attention by the person who assisted him with his accounts.

## DECISION ON PROFESSIONAL MISCONDUCT

The Tribunal was satisfied beyond reasonable doubt on the basis of the admitted facts that the Respondent had acted in the manner set out in its findings in fact. Following the conclusion of a transaction, the Respondent held funds for the Secondary Complainer. A sum was due to Revenue Scotland for I.BTT. The Respondent failed to pay Revenue Scotland. The Secondary Complainer incurred a penalty. The Respondent failed to disburse the client's balance when there was no longer reason to retain the money. He was both the designated cashroom manager and the person who dealt with the transaction. Adherence to proper cashroom procedures would have alerted the Respondent to the position. The Secondary Complainer repeatedly attempted to have the Respondent act. A complaint was made to the SLCC. The Law Society investigated. The Respondent failed to cooperate with and respond to the Complainers about their investigation. He failed to respond to correspondence and statutory notices. This conduct impedes the Council in its statutory obligation to investigate complaints.

The Tribunal noted that the Complainers averred a lack of integrity in respect of the Respondent's conduct in failing to respond to it during its investigation. Having regard to the guidance contained in Wingate and Evans-v-The SRA; SRA-v-Mallins [2018] EWCA Civ 366, and in particular paragraph 97 of that decision, the Tribunal was not satisfied that the conduct demonstrated a lack of integrity. According to that case, integrity is a broader concept than dishonesty. In professional codes of conduct, the terms "integrity" is useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Integrity connotes adherence to the ethical standards of one's own profession and involves more than mere honesty. The examples of lack of integrity given in that case involved a greater moral or ethical failure than was present in this case. Lack of integrity may involve misleading; subordinating the interests of a client to the solicitor's interests; making improper payments out of the client account; becoming involved in clearly suspect transactions; or making false representations. The Respondent in the present case did not mislead the Secondary Complainer or any other person. He did not misuse the money or subordinate the client's interests to his own. The Complaint involved a single incident of failing to respond to his regulator. There was no evidence to suggest he had deliberately acted or omitted to act in a way that brought his integrity into question. The Tribunal therefore made no finding of breach of Rule B1.2 (as it had recently in Law Society-v-Thomas Steel and Law Society-v-Douglas Lamond).

The Tribunal went on to consider the admitted conduct and established breaches of rules in the context of the test for professional misconduct contained in Sharp-v-Council of the Law Society of Scotland 1984 SLT 313. According to that case,

*“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, the same question falls to be asked and answered and 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 was satisfied that even without a finding of lack of integrity, the Respondent’s conduct represented a serious and reprehensible departure from the standards of competent and reputable solicitors. Solicitors should make payments timeously as instructed and disburse client balances promptly (Rule B6.11). They should comply with the accounts rules which assist with this (Rule B6.8, B6.9 and B6.13). They should cooperate with their regulators (Rule B1.9.1 and B1.16). It is essential in the public interest that solicitors cooperate with the Law Society exercising its role as a regulatory body. The Law Society cannot properly exercise its function to protect the public without the cooperation of solicitors. These failures undermine the public’s trust in the profession, and therefore its reputation. Having considered all the circumstances, the Tribunal was satisfied that the Respondent was guilty of professional misconduct.

The Fiscal moved for expenses and made no comment on publicity. He tendered the Respondent’s record card which showed a previous misconduct finding from 2008.

## **SUBMISSIONS IN MITIGATION**

The Respondent explained that the earlier finding of misconduct arose at a time when he had just started his business and was not familiar with the Accounts Rules. He described various professional and personal factors which preceded his conduct in this case. He described the impact on his health. He indicated that any award of expenses would be dealt with by the Judicial Factor.

## **DECISION ON SANCTION, PUBLICITY AND EXPENSES**

The Tribunal considered the Respondent’s conduct to be at the lower end of the scale of misconduct. An aggravating factor was the previous misconduct finding which related to breach of the Accounts Rules. Mitigating factors included the fact that the conduct related to one client and there was no course

of conduct. The Respondent demonstrated some insight into his conduct. Although he had not produced a medical report, the Tribunal accepted that he had experienced health difficulties and that professional life as a sole practitioner can involve significant pressure. The Tribunal appreciated the Respondent's openness. He had cooperated with the Fiscal and entered into a Joint Minute. He had participated in the Tribunal hearing, even although he had been retired for over two years. The Judicial Factor had been appointed on an interim basis in December 2019. There had therefore been a limited period (four months) during which the Respondent could have attempted to rectify the matter for the Secondary Complainer. Given the Respondent's current means, there was no purpose in a fine. The Tribunal considered whether a restriction on the Respondent's practising certificate was necessary to protect the public but ultimately decided that the matter could adequately be dealt with by a censure.

The Tribunal found the Respondent liable in the expenses of the Complainers and of the Tribunal. It directed that publicity would be given to the decision, and that publicity would include the name of the Respondent but need not identify anyone else. The Tribunal made no direction regarding the Secondary Complainer given the terms of his correspondence with the Fiscal.



**Colin Bell**

**Chair**