

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

**FINDINGS**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND, 26  
Drumsheugh Gardens, Edinburgh**

**Complainers**

**against**

**GERARD TIERNEY, Boswell  
Legal Chambers, 189 Main Street,  
Auchinleck**

**Respondent**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") submitting that, Gerard Tierney, Boswell Legal Chambers, 189 Main Street, Auchinleck (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 6 August 2014 and notice thereof was duly served on the Respondent.
4. At the hearing on 6 August 2014 the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was present and represented himself.

5. The Fiscal made a motion to amend the Complaint to insert an additional paragraph confirming that neither the Council of the Law Society of Scotland nor any Secondary Complainer claimed to have been directly affected by the alleged misconduct nor sought compensation for any loss, inconvenience or distress resulting from it. There being no opposition to that motion, the motion was granted. Thereafter the Respondent confirmed that he was admitting the averments of fact, duty and professional misconduct within the Complaint. A list of productions had been lodged on behalf of the Complainers and the Respondent confirmed the accuracy of these. Given the extent of the admissions by the Respondent, no evidence required to be led. The Fiscal for the Complainers invited the Tribunal to hold that professional misconduct was established.
  
6. The Tribunal found the following facts established:-
  - 6.1 The Respondent's date of birth is 12 May 1961 and he was enrolled as a solicitor on 21 December 1983. He is a sole practitioner and has a place of business at Boswell Legal Chambers, 189 Main Street, Auchinleck .
  
  - 6.2 On 11 January 2011 the Respondent instructed Company 1 to provide a report in relation to a client of the Respondent, Mr A who was due to appear in Kilmarnock Sheriff Court in respect of certain drugs offences on 13 January. The Respondent had obtained a full legal aid certificate for his client and had obtained sanction from the Scottish Legal Aid Board up to a limit of £250 to commission the said expert report. Company 1 provided a report dated 11 January 2011 and issued an invoice in respect of said report for the sum of £196.80. Subsequently, on 21 January 2011 the Scottish Legal Aid Board paid the Respondent, by way of a reimbursement, the sum of £196.80 to allow him to settle the invoice rendered by Company 1.

- 6.3 On 31 May 2011 the Respondent instructed Company 1 to provide an expert report in respect of his client, Ms B, who was due to appear in Court on 30 June 2011 in relation to certain drugs offences. The Respondent had obtained a full legal aid certificate for his client and had also been granted sanction by the Scottish Legal Aid Board to instruct the said expert report. Company 1 subsequently provided their expert report on 2 June 2011 and submitted an invoice for the sum of £295.20. On 8 July 2011 the Scottish Legal Aid Board made payment to the Respondent of the sum of £295.20, by way of reimbursement, to allow him to settle the said invoice.
- 6.4 The Respondent failed to settle both of the invoices hereinbefore mentioned despite being in funds and having received payment from the Scottish Legal Aid Board to allow him to do so.
- 6.5 Company 1 then forwarded reminders to the Respondent in respect of their outstanding invoices on 16 September, 3 November and 14 December all 2011 and 11 January, 2 February, 2 March and 29 May all 2012. The Respondent failed to respond to these reminder letters and failed to make the payments due.
- 6.6 Company 1 then instructed agents on their behalf to commence proceedings for payment against the Respondent at Aberdeen Sheriff Court and on 6 September 2012 Decree was granted against the Respondent for payment of the sums of £196.80 and £295.20 together with statutory interest and a further sum of £80 in terms of the late payment of Commercial Debts (Scotland) Regulations 2002 and an award of expenses totalling £176.23. An Extract Decree was served on the Respondent on 11 October 2012. The Respondent paid the sum of £295.20 to

Company 1 on 23 August 2012 and paid the sum of £196.80 on 7 June 2013. A further payment of £256.23 was made by the Respondent on 31 July 2014 in regard to the expenses and compensation payment.

7. Having considered the foregoing circumstances, and having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect that he failed to:

- a) settle an invoice dated 11 January 2011 issued by Company 1 in the sum of £196.80 and failed to respond to reminders and that despite having received reimbursement of that amount from the Scottish Legal Aid Board,
- b) settle an invoice dated 2 June 2011, issued by Company 1 in the amount of £295.20 and failed to respond to reminders in that respect despite receiving reimbursement of said sum from the Scottish Legal Aid Board, and
- c) satisfy the terms of decree for payment granted against him at Aberdeen Sheriff Court on 6 September 2012 and subsequently intimated and served upon him on 11 October 2012.

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

Edinburgh 6 August 2014. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Gerard Tierney, Boswell Legal Chambers, 189 Main Street, Auchinleck; Find the Respondent guilty of Professional Misconduct in cumulo in that he failed to settle two invoices issued by Company 1 or respond to reminders despite having received reimbursement of the sums concerned from the Scottish Legal Aid Board, and that he failed to satisfy the terms of a Sheriff Court Decree, granted against and intimated to him, for said sums: 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 and may but has no need to include the names of anyone other than the Respondent.

**(signed)**

**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

**IN THE NAME OF THE TRIBUNAL**

**Vice Chairman**

**NOTE**

At the hearing on 6 August 2014 the Tribunal had before it the Complaint and Productions lodged on behalf of the Complainers. The Fiscal moved to amend the Complaint to insert a paragraph confirming that neither the Complainers nor any Secondary Complainer claimed to have been directly affected by the alleged professional misconduct nor were seeking compensation. This motion, being unopposed, was granted. Thereafter the Respondent confirmed that he was accepting the entire content of the Complaint and the accuracy of the Productions lodged. The Fiscal lodged an up to date record card for the Respondent. The Respondent lodged a copy of a bank entry showing an additional payment of funds to the creditors. The Fiscal invited the Tribunal to hold that professional misconduct had been established.

**DECISION**

Despite the Respondent's admission of professional misconduct, the Tribunal required to be satisfied that the facts he had admitted met the test set out in the case of Sharp.

In this case the Respondent had not only delayed in the payment of two invoices, but had received payment from the Legal Aid Board for the invoices concerned and had failed to pass that on to the entitled party. Thereafter the creditors had had to obtain a Court Decree before the Respondent had eventually paid the principal sum due.

This, therefore, was not just a case of a simple delay in payment.

Expert witnesses accept instructions from solicitors based on a system of trust. The Respondent's conduct clearly breached that trust and damaged the reputation of the profession. This conduct, in cumulo, fell well below the standard to be expected of a competent and reputable solicitor and was serious and reprehensible. Accordingly, the Tribunal held that professional misconduct had been established.

**DISPOSAL**

The Tribunal then heard the Respondent in mitigation.

## **SUBMISSIONS FOR THE RESPONDENT**

The Respondent indicated that the matters the Tribunal had before it today resulted from financial difficulties faced by the Respondent from 2011 to the end of 2012. These financial difficulties had in fact led to him being sequestered.

The Respondent was enrolled as a solicitor in 1984 and began to practice on his own account in 2001. The Respondent had not had problems until this matter and the matter disclosed on his record card (which the Fiscal had explained was a Censure for unsatisfactory conduct in delaying to pay the SLCC General Levy Fee timeously).

Ninety-five percent of the Respondent's income at that time came from criminally legal aided cases. During 2011 there was a significant drop off of business as a result of fewer prosecutions being raised. Additionally, greater difficulties in receiving legal aid were experienced at that time.

The Respondent had had significant tax problems which had led to negotiations with HMRC. A family member had helped the Respondent avoid sequestration at their instance. However, this was a sign that his affairs were not satisfactory. His wife was a fully qualified primary teacher but had not been working due to illness. Three of his four daughters were at university. The Respondent was the sole income earner. One of his daughters had been on a placement abroad as part of her university course when she had taken ill and had to be brought home at considerable expense.

Additionally, the Respondent was having problems with the general administration of his firm. A long term assistant left the firm in 2008. This had led to problems with the Scottish Legal Aid Board audits concerning time sheets etc. In due course the Respondent was removed from the Criminal Legal Assistance Register. From April 2012 the Respondent had not been able to provide criminal legal aid and therefore lost 95% of his business. This clearly accelerated his worsening financial position and he was sequestered in August 2012. The Respondent's business was absorbed by another firm that also took him on as a consultant.



Prior to the incidents mentioned within the Complaint, the Respondent had had a good working relationship with the Expert Witness concerned. The Respondent had employed a book-keeper who would come to him once a month. The book-keeper would draw to the Respondent's attention when matters required to be paid. Unfortunately, as a result of the Respondent's financial position, he could no longer employ the book-keeper.

The creditors concerned had been patient, kind and courteous to the Respondent throughout. Unfortunately, the Respondent was unable to cope as difficulties piled one on top of another.

The Respondent's sequestration had been discharged. He had set up on his own account again in December 2013. The Legal Aid Board would not allow him to register for the provision of legal aid. Now 75% of his business was safeguarding work. Additionally, he was very interested in family court work and was a court reporter.

The Respondent had paid his professional fees this year with help from a family member who he was repaying on a monthly basis. He now did little actual court work. There had been some cases where Children First had asked him to represent the children involved. He also conducted a little road traffic work. The Respondent had been able to put his life into some sort of order and resolve his financial matters, albeit in a piecemeal way.

The trouble the Respondent faced in 2011 and 2012 had left a lasting mark on him. He had let his family down and this distressed him. He had been embarrassed by his removal from the CLA Register.

With regard to his current financial situation, the Respondent confirmed that his wife was still not working. Three of his children were living at home, although they were not financially dependent. He had been served with a calling up notice regarding the mortgage for the family home. That action was sisted and he was currently addressing the mortgage arrears. His gross monthly income was approximately £3500

with outlays of approximately £2500. His wife was helping him with office administration.

The Fiscal confirmed that he had nothing to add. The Fiscal had previously moved for an award of expenses which was not opposed by the Respondent.

### **DECISION WITH REGARD TO PENALTY**

The Respondent had been a solicitor for 30 years. This was his first appearance before the Tribunal. The Respondent had on one occasion been Censured for unsatisfactory professional conduct in failing to pay the SLCC General Levy Fee timeously. The Respondent's whole demeanour before the Tribunal had confirmed his embarrassment and remorse. The Respondent had cooperated with the Tribunal and had tendered an early plea of guilty. He appeared to demonstrate insight into his conduct and had taken steps to avoid a repetition of this matter.

There appeared to be no requirement for supervision and no risk to the public. Little purpose would be served by imposing a financial penalty. It was appropriate that expenses be awarded against the Respondent in this case and he therefore faced significant financial liability in that relation.

In all of the circumstances the Tribunal held that it was appropriate to mark the significance of the Respondent's conduct, balanced with his personal circumstances, with a Censure.

Expenses were awarded against the Respondent and the usual order was made with regard to publicity.

**Vice Chairman**