

**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

**IAN SMITH WATSON, Blue House, 2 Lowther
Terrace, Glasgow**

1. A Complaint dated 22 May 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 Ian Smith Watson, Blue House, 2 Lowther Terrace, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Ms A. She 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, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.
6. Of consent, the Tribunal allowed an amended Complaint dated 4 September 2018 to be received and substituted it for the Complaint dated 22 May 2018. The Respondent pleaded

guilty to amended Complaint indicating that all averments of fact, duty and misconduct contained within the Complaint were admitted. The Tribunal heard submissions from both parties.

7. Having given careful consideration to the terms of the Complaint as amended, the Productions for the Complainers and the parties' submissions, the Tribunal found the following facts established:-

7.1 The Respondent is Ian Smith Watson. He was enrolled as a solicitor on 2 October 1978. From 15 January 2007 until 21 October 2011, the Respondent was the sole partner and sole director in the legal practice of Ian Smith Watson Solicitors (Scotland) Limited ("**the Firm**").

7.2 The Firm ceased business on 21 October 2011, when all ongoing files were transferred to Stewarts & Murdochs. The Respondent was employed by Stewarts & Murdochs from 24 October 2011 to 19 August 2012. Stewarts & Murdochs ceased business on 19 August 2012. The Respondent was employed by Raeside Chisholm Solicitors Limited from 20 August 2012 until 20 December 2013.

7.3 The Secondary Complainer instructed the Firm in or around October 2008 in relation to a medical negligence claim against Lanarkshire Health Board. A number of related claims were raised by several parties: (i) the Secondary Complainer in her own right; (ii) the Secondary Complainer as guardian for her daughter; (iii) the Secondary Complainer's partner, DM; (iv) DM's father; (v) DM's mother; and (vi) the Secondary Complainer's mother. The claims arose from circumstances relating to the birth of the Secondary Complainer's daughter, who was delivered on 21 February 2008 and died on 23 February 2008 due to complications.

7.4 The Firm acted on the Secondary Complainer's behalf from October 2008 until it ceased trading in October 2011, when the file transferred to Stewarts & Murdochs. Shortly after the cessation of business, the Respondent wrote to the Law Society's Registrar on 1 November 2011 and confirmed that he would retain the Firm's accounting records for the required retention period of 10 years.

- 7.5 The Respondent issued a terms of business letter on 3 October 2008. It stated that where the Firm received sums belonging to the Secondary Complainer, the Firm was entitled to deduct all outstanding fees and outlays before sending the balance to the Secondary Complainer. The Secondary Complainer made an initial payment to account of £500 in respect of fees.
- 7.6 In or around January 2011, Digby Brown was instructed in connection with Court of Session proceedings. The case was due to time bar the following month. Digby Brown offered to provide funding for the litigation through their finance company, Compensate. Funding was offered subject to payment of a success fee in the event of the action succeeding. In terms of the funding agreement, agents and counsel agreed to act on a speculative basis, all outlays were fully funded from the date of the agreement and the clients were protected from any awards of expenses made against them in the event of the action being unsuccessful.
- 7.7 Proceedings were raised in February 2011. In or around May 2011, Digby Brown accepted a minute of tender on the Secondary Complainer's behalf. The Respondent was asked to send on his files and ledgers to Digby Brown so that law accountants could prepare the judicial account for settlement purposes. The Respondent duly sent his files to them on or around 19 May 2011.
- 7.8 The only issue that remained for the Respondent to deal with at this time was settlement of judicial expenses. On or around 17 May 2011, the Respondent assured the Secondary Complainer that there would be "no more bills to pay".
- 7.9 On or around 3 June 2011, the Respondent issued a fee note dated 2 June 2011 to the Secondary Complainer for £16,573.50, comprising a restricted fee of £7,811.25 plus VAT at 20% and outlays (counsel's fees) of £7,200. This was stated to cover all work done in connection with the claim. The Respondent asked the Secondary Complainer to confirm that this sum could be deducted from the judicial settlement per the firm's mandate. He advised her that judicial expenses still had to be dealt with in her favour and that any sums expended by her at this stage would still be recovered to some extent, including refunds of medical expert fees.

- 7.10 The Respondent included an outlay of £7,200 in respect of Donald MacLeod QC's fees in his invoice of 2 June 2011. The Secondary Complainer remitted funds to pay Donald MacLeod's fees on or around 8 June 2011. The Respondent did not pay the full sums due to Senior Counsel at that stage. He remitted £4,200 to Faculty Services in or around June 2011.
- 7.11 The Firm ceased on 21 October 2011 and correspondence was thereafter sent to the Respondent at Stewarts & Murdochs.
- 7.12 At the end of October 2011, expenses were agreed with the Health Board in the sum of £16,875. In a letter from the law accountants to Digby Brown dated 31 October 2011, the accountants noted, "As far as I can see the clients appeared to have been billed on an agent and client basis for all work undertaken by Ian Smith Watson and on that basis the recoverable judicial expenses will require to be reimbursed to the client. I am not entirely sure to what extent outlays have already been billed to the client and paid. Again if the clients have paid any of the recovered outlays to Mr Watson these also require to be reimbursed."
- 7.13 The Respondent requested that Digby Brown draw a cheque for £4,993.75 (comprising judicial expenses of £4,250 plus VAT) made payable to Stewarts and Murdochs, the Respondent's then employers, in or around November 2011. The Respondent's letter of 18 November 2011 to Digby Brown stated, "I will reimburse my clients' [sic] accordingly." The letter from Digby Brown dated 30 November 2011 enclosing the cheque for £4,993.75 noted, "We understand that you will reimburse your clients in this sum."
- 7.14 A second cheque for £5,348.96 made payable to the Secondary Complainer was enclosed in respect of judicial outlays, comprising:
- GP records (Mrs A) £50.00
 - GP Records (Mr A) £50.00
 - Fees of Dr Matson £450.00
 - Fee of Dr Farquharson £550.00
 - Copy Hospital Records £10.00
 - Fee of Ms Annette Lobo £600.00
 - Postage charges for Annette Lobo £8.96

•	Extract Certificates	£30.00
•	Faculty Services	£3,600.00

- 7.15 Both cheques were received by the Respondent on or around 7 December 2011. By letter of the same date, the Respondent sent the Secondary Complainer the second cheque in her name for the recovered outlays amounting to £5,348.96 and advised her that the accountants were finalising the expenses in the case and that he would be back in touch as matters progressed. The Respondent did not account to the Secondary Complainer for the first cheque in the sum of £4,993.75.
- 7.16 The Respondent's letter to the Secondary Complainer of 7 December 2011 made no mention of any outstanding sums due to Faculty Services or Dr Farquharson.
- 7.17 On or around 19 December 2011, the Respondent sent a cheque for £3,000 to Donald MacLeod QC's clerk (which was the balance of the outlay included in the invoice of 2 June 2011). By this stage the sums due to Counsel had been restricted to £6,000. The Secondary Complainer was therefore entitled to a refund of £1,200 because she had settled Donald MacLeod's fees in the sum of £7,200 on or around 8 June 2011 as noted above.
- 7.18 By letter of 5 January 2012 the Respondent sent a cheque for £550 to Dr Farquharson in settlement of his medical report. Dr Farquharson's report had been prepared on 7 February 2009 and was invoiced on the same date. A copy of his invoice was sent by the Respondent to the Secondary Complainer on 3 March 2009 and payment was requested at that time. The Secondary Complainer maintains that this invoice had previously been paid.
- 7.19 Digby Brown contacted the Respondent in early March 2012 to advise that the Secondary Complainer had been in touch to say that she had not received reimbursement of the recovered judicial expenses. The law accountants had confirmed that the fees recovered by way of judicial expenses related to work which had been invoiced to the Secondary Complainer and paid by her in May 2011. As such, they fell to be repaid to the Secondary Complainer. The Respondent was also asked to refund a further £1,200 to the Secondary Complainer, representing a restriction of a Faculty Services fee note.

- 7.20 The Respondent wrote to Digby Brown on or around 7 March 2012, advising that there was an outstanding fee of approximately £900 due to Robert Skinner, Advocate, and that he had retained funds due for payment. He said that he had written to the Secondary Complainer advising of the position. The Respondent wrote to the Secondary Complainer the same day enclosing a cheque for £1,200 relating to the restricted Faculty Services invoice.
- 7.21 The Respondent wrote to Digby Brown again on or around 14 March 2012. He advised that there remained outstanding counsel's fees which were not recoverable outlays as they related to extensive pre-litigation work. The Respondent wrote to the Secondary Complainer. He acknowledged receipt of judicial expenses in the sum of £4,993.75 but stated that no sums in respect of the recovered judicial expenses had been taken to fee, but merely to settle outstanding counsel's fees and other outlays.
- 7.22 Digby Brown's position was that the Respondent had rendered an agent/client account in the matter to the law accountants. The Secondary Complainer and her family were entitled to assume that any fees for work which the Respondent had instructed Counsel to do were included within the fee notes rendered to them. If further fees were to be charged then the Secondary Complainer should be provided with a detailed breakdown of the work carried out and the fees charged, together with a breakdown of all outlays they were being asked to meet.
- 7.23 The Respondent considered that the law accountant had made an error in presuming that the sums included in respect of Counsel's fees had already been paid to him when in fact they had not. He wrote to the Secondary Complainer on or around 14 March 2012 advising that the withheld sum of £4,993.75 was in effect Counsel's fee which was restricted to £3,000. He considered there to have been an overpayment of sums due to the Secondary Complainer, but in the interest of goodwill he did not intend to seek their recovery.
- 7.24 The Secondary Complainer wrote a letter of complaint to the Respondent dated 27 March 2012. She alleged that the Respondent had failed to provide details of Counsel's fees and outlays referred to in his letter which he said justified the retention by him of the sum of £4,993.75. The Respondent was asked to provide a detailed account of what was due.

- 7.25 Further complaints correspondence was exchanged between Stewarts & Murdochs and the Secondary Complainer's mother between May and July 2012. Stewarts & Murdochs maintained that a full accounting had already been provided to the Secondary Complainer.
- 7.26 Stewarts & Murdochs ceased on 19 August 2012 when each of the 3 partners took their clients with them. The Respondent was an employee of Raeside Chisholm Solicitors Limited from 20 August 2012 until 20 December 2013.
- 7.27 Throughout the period he was instructed, the Respondent failed to keep and maintain adequate ledgers in relation to payments made on the Secondary Complainer's behalf and payments to account made by her. At no time was there a proper accounting by the Respondent to the Secondary Complainer as his client for all sums received from her or for all sums paid out or received by the Respondent. The Secondary Complainer requested a full account from the Respondent in or around June 2012, but this has never been provided.
- 7.28 The Respondent failed to retain the client ledger relating to the Secondary Complainer in respect of her medical negligence claim. To date the Respondent has been unable to provide a copy of the cash ledger kept in respect of the Secondary Complainer. The Respondent maintained that the ledger card was with the client file which he provided to Digby Brown in June 2011. However the files recovered by the SLCC and passed to the Complainer did not contain the ledger card or a copy of it. It is also apparent from the law accountant's letter to Digby Brown of 31 October 2011 that the ledger had not been seen by the law accountant when the account of judicial expenses was prepared and settled, as there was uncertainty about which outlays had been invoiced to the Secondary Complainer.
- 7.29 After the payments made to Faculty Services (£3,000), Dr Farquharson (£550) and the Secondary Complainer (£1,200), this left a balance of £243.87 (including 8 pence of interest) out of the £4,993.75 judicial expenses received by Stewarts & Murdochs. This balance was transferred to Raeside Chisholm when Stewarts & Murdochs ceased. It was ultimately paid out to Faculty Services in respect of Robert Skinner's fees on 23 October 2012. As a result of the Respondent's

failure to communicate a full and accurate position on his actions in connection with judicial expenses, the Secondary Complainer was deprived of the full value of the expenses recovered on her behalf.

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

- a) wrongly withheld from the Secondary Complainer the sum of £4,993.75 received in December 2011 until July 2017;
- b) failed to account to the Secondary Complainer for all sums paid to him by her and for all sums paid out by him on her behalf;
- c) failed to communicate to the Secondary Complainer the basis for the deduction by the Respondent of the sum of £3,793.75 from the recovered judicial expenses due to be paid to the Secondary Complainer; and
- d) failed to retain a client ledger for the Secondary Complainer.

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 22 May 2018 at the instance of the Council of the Law Society of Scotland against Ian Smith Watson, Blue House, 2 Lowther Terrace, Glasgow; Find the Respondent guilty of professional misconduct individually and *in cumulo* in respect that he (a) wrongly withheld from the Secondary Complainer the sum of £4,993.75 received in December 2011 until July 2017, (b) failed to account to the Secondary Complainer for all sums paid to him by her and for all sums paid out by him on her behalf, (c) failed to communicate to the Secondary Complainer the basis for the deduction by the Respondent of the sum of £3,793.75 from the recovered judicial expenses due to be paid to the Secondary Complainer; and (d) failed to retain a client ledger for the Secondary Complainer; Censure the Respondent; Fine him in the sum of £2,000 to be forfeit to Her Majesty; 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.

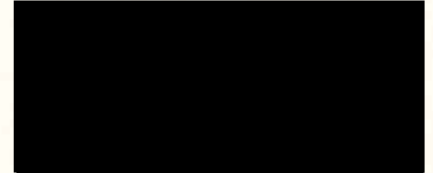
(signed)

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 25 SEPTEMBER 2018.

IN THE NAME OF THE TRIBUNAL



Colin Bell
Vice Chairman

NOTE

At the hearing on 4 September 2018, the Tribunal had before it the new Complaint dated 4 September 2018, and two Inventories of Productions for the Complainers.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal provided written submissions to the Tribunal and referred to these and the Productions lodged on behalf of the Complainers throughout his oral submissions. He explained that the Respondent had previously issued an invoice to the Secondary Complainer which he stated covered all work in connection with the claim. The Respondent arranged for the Secondary Complainer to be reimbursed for the outlays timeously in December 2011. However, he retained these monies received in respect of his fees. He told Digby Brown he would pass these funds on to the Secondary Complainer. However, he did not tell her about these monies. Instead, he said the law accountants were finalising accounting and that he would be back in touch. There was no further work to be done by the law accountants at that time. He withheld the recovered judicial fees and failed to explain the situation to the Secondary Complainer.

In March 2012, the Secondary Complainer brought it to Digby Brown's attention that the Respondent had not made over the recovered fees to her. Digby Brown wrote to the Respondent in this regard and also informed him that a further £1,200 was due to be returned to the Secondary Complainer due to a restriction of counsel's fees. The Respondent returned £1,200 to the Secondary Complainer. However, he continued to retain the recovered fees. He told Digby Brown and the Secondary Complainer at that stage that he was holding the funds to meet counsel's fees.

The Fiscal explained that the Respondent used the recovered fees to settle outstanding counsel's fees of £3,000 in December 2011 and a medical report of £550 in January 2012. He did not explain to the Secondary Complainer that he was applying the recovered fees in this way. The monies were eventually repaid to the Secondary Complainer in July 2017 after the matter had been reported to the Law Society.

The Fiscal claimed that the Respondent had failed to act in the client's best interests and failed to communicate effectively with her. He withheld funds from the client. He failed to explain why money should be deducted from the recovered funds. He claimed that outlays were still to be met after he had issued a fee in June 2011 stated to be for all work in connection with the matter. The Fiscal also said that the Respondent's failure to keep appropriate accounting records was a breach of the Accounts Rules

sections of the 2011 Practice Rules. Solicitors must keep proper accounting records at all times and retain these. Had the Respondent kept a full and accurate account of fees and outlays and communicated clearly with the Secondary Complainer, there would have been no surprises. The Secondary Complainer had been led to believe that all costs had been met. However, the Respondent subsequently identified other costs and used the recovered fees to meet them. Had the Respondent kept proper accounts, these further costs would have been identified at an earlier stage and depletion of the recovered fees would have been avoided.

With reference to Tribunal case law, the Fiscal highlighted how important it was for solicitors to comply with the Accounts Rules. He submitted that the failure to keep proper accounting records was therefore more than a “technical breach” of the Rules because it was directly relevant to the failure by the Respondent to provide the Secondary Complainer with fees recovered on her behalf and the failure to provide a clear explanation why the funds had not been made over to her. The Fiscal submitted that these failures were a serious and reprehensible departure from the standards of competent and reputable solicitors and therefore satisfied the Sharp test of professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath began by explaining the different bases upon which expenses can be recovered following a court action. He noted that some expenses are irrecoverable. The Secondary Complainer’s case was not straightforward. It involved medical negligence. It was essential to procure a variety of reports and obtain records. The Respondent engaged counsel to provide an opinion on liability and quantum. The Secondary Complainer was refused legal aid twice. The Respondent did give a terms of engagement letter to the Secondary Complainer but he should have sent out a detailed scope letter outlining the risks and potential liabilities of litigation. The risk of losing a court case and being found liable in expenses is significant. However, due to the way judicial expenses are calculated, there will always be a shortfall even if a party is successful and receives an award of expenses. Clients must be advised that some things are not recoverable and even in the best possible scenario, they will still have to pay some fees and outlays. In this case, the Secondary Complainer should have been told that she would be liable for counsel’s fees for his opinion on liability and quantum as this was not a recoverable expense.

The Respondent’s business was liquidated in 2011. Everything was transferred to Stewarts and Murdochs. The Respondent maintains that there was a ledger on the file when it went to the law accountants. It had been prepared using law ware software. However, the law accountants and Digby Brown say that they did not receive one and it has not been possible to recover an electronic version.

It was appropriate that the recovered fees went through the firm. However, it is accepted that there was a lack of effective communication with the Secondary Complainer. Mr Macreath noted that the Secondary Complainer did not seek compensation. For her, the issue was the lack of proper accounting. Once Mr Macreath gave the Respondent advice that the money should be returned, he did so immediately.

In answer to a question by a Tribunal member, Mr Macreath indicated that the Respondent was experienced in medical negligence cases and ought to have warned his client regarding expenses. In response to another question by a Tribunal member, the Fiscal confirmed that the Complainers' case was based on failure to communicate not dishonesty.

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. The Respondent had a duty to act in the best interests of his client, communicate effectively with her, keep properly written up accounting records to show his dealings with clients' money and retain for the required retention period all accounting records. If solicitors are to continue to enjoy the public trust in regard to their financial affairs, they must have careful regard to all the requirements and obligations incumbent on them as contained in the accounts rules. This case provides a practical example of the consequences which can flow from breaches of those rules. Failure to keep the appropriate records and account to the client was related to the failures in communication. Maintaining detailed records allows the solicitor to demonstrate that he or she can account for all funds held by clients. The management of clients' funds is an essential part of the administration of a solicitor's practice. Clients entrust funds to a solicitor in the expectation that such monies are in safe hands. This Tribunal has often observed that solicitors are privileged to enjoy this degree of trust. However, they also have an obligation to take the utmost care of clients' money. Honesty and propriety is only a small part of this duty. The essential feature of the responsibility is that the solicitor is in a position to account to each and every client at all times. This requires the solicitor to maintain full and accurate records.

The Respondent failed in these duties. The Tribunal accepted that his conduct had not been dishonest. However, the accounting failures had a detrimental effect on his ability to fulfil his duties to his client. The Respondent's conduct was likely to damage the reputation of the profession. His conduct

represented a serious and reprehensible departure from the standards of competent and reputable solicitors. Each failing was capable of constituting professional misconduct on its own.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal indicated that the Respondent had three previous findings against him. One service issue related to a delay in settling a witness's professional fees. Another service issue arose from his failure to advise the Scottish Legal Aid Board he had withdrawn from acting. Lastly, the Law Society had made a finding of unsatisfactory professional conduct against him in 2017. This was due to him sending a letter to a third party, the tone of which was threatening and offensive.

SUBMISSIONS IN MITIGATION

Mr Macreath outlined the Respondent's professional history. Having been a partner in a law firm for many years, the Respondent formed his own business, Ian Smith Watson Solicitors, from 2007 to 2011. The firm's demise in 2011 was due to outstanding fees due to him which were not paid. His liquidation was managed with the approval of the Law Society. He joined Stewarts and Murdochs as an employee. The circumstances of this complaint arose at this time. The firm split again shortly afterwards.

The Respondent has been a part-time Judge for the Tribunals Service and part-time Convenor of the Council Tax Reduction Review Panel. Since 2014, he has been employed as an assistant with another firm. During his professional life, the Respondent has been involved in a number of significant cases involving difficult and stressful work. At present, he is suffering some health difficulties. However, he is anxious to work and to do the work properly. Mr Macreath noted that the Secondary Complainer had been repaid in full.

DECISION ON SANCTION

The Tribunal considered that the professional misconduct was at the lower end of the scale. It appeared to have been an isolated incident. There was an early plea of guilt. There was a low risk to the public. There was no requirement for supervision, particularly since the Respondent was no longer acting as a principal. Corrective steps had been taken. Therefore, the Tribunal determined that the appropriate sanction was to Censure the Respondent and to impose a Fine.

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. The Tribunal noted that the Secondary Complainer did not wish to claim compensation through the Tribunal.



Colin Bell
Vice Chairman