

**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, 26
Drumsheugh Gardens, Edinburgh
Complainers**

against

**DANIEL O'NEILL, formerly
residing at 25 Blairbuie Drive,
Glasgow and now residing at 5
Harmony Place, Glasgow
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") averring that, Daniel O'Neill residing at 5 Harmony Place, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. The Complaint indicated that there was a Secondary Complainer, NM of property 1 who might seek compensation.
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 29 October 2015 and notice thereof was duly served on the Respondent.

5. Prior to the hearing, the Complainers advised that NM did not wish to enter the proceedings.

6. At the hearing on 29 October 2015, the Complainers were represented by their Fiscal Grant Knight, Solicitor, Edinburgh. The Respondent was neither present nor represented. On 28 October 2015 the Respondent had sent an email to the Tribunal's office indicating that he did not intend to appear and stating his position with regard to the Complaint. Having heard evidence from the Depute Clerk regarding service of the Complaint and the Notice of Hearing, the Tribunal resolved to proceed to hear and determine the Complaint in the absence of the Respondent. Given the extensive admissions contained in the email from the Respondent, evidence did not require to be led. The Fiscal made submissions to the Tribunal and referred to Productions and an Affidavit lodged on behalf of the Complainers.

7. Having given careful consideration to the submissions of the Fiscal and the Respondent's email, the Tribunal found the following facts established:-
 - 7.1 The Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 21st January 1964 and he was enrolled as a solicitor on 23 March 1988. He formerly operated as a sole practitioner under the name of Roberts O'Neill, Solicitors with a place of business at 38 Queen Street, Glasgow G1 3DX. He now resides at 5 Harmony Place, Glasgow G51 3SF. He was sequestered on 6 August 2014.

 - 7.2 NM consulted with the Respondent on 12 July 2007 in relation to a personal injury claim against his employers. NM feared that he might lose that employment if he submitted a formal claim and the Respondent was instructed not to proceed with any such claim at that point. NM advised the Respondent of his updated circumstances in telephone calls in September and

November 2007 and he confirmed on 11 December 2007 that he had had his employment terminated as his employers had been unable to redeploy him elsewhere within their organisation and he now wished to proceed with his claim. The Respondent advised that it would be necessary to recover NM's medical records. The Respondent wrote to the hospitals who had treated NM and to his GP on 16 and 18 June 2008 to recover those medical records. Those records were then received by the middle of October 2008. On 21 July 2009 the Respondent forwarded those medical records to a Consultant Surgeon to request that he prepare a report in respect of the potential claims which NM may have had against his former employers. That report was received and sent to NM in September 2009 and on 9 December 2009 the Respondent wrote to NM's former employers setting out the basis of his claim. No response was received and a reminder letter was issued by the Respondent on 1 February 2010 advising that in the absence of any response court proceedings would be commenced. No response was received and the Respondent then framed an Initial Writ which was sent to Glasgow Sheriff Court for warranting on 30 April 2010. On that date the Respondent instructed Sheriff Officers to effect service of the Writ to avoid any risk of the triennium expiring. The Writ was duly served on NM's employers on that date. The Respondent thereafter failed to take any further action on behalf of NM in relation to those proceedings or his claim.

- 7.3 NM sought updates from the Respondent in relation to his claim by telephoning him on multiple occasions between 15 August 2011 and 11 May 2012. The Court proceedings raised on behalf of NM fell on 22 May 2011. The Respondent failed to Minute for Decree against the Defenders in that action when they did not lodge a Notice of Intention to Defend. The instance in the action accordingly fell on 22 May 2011 bringing

the action to an end. NM also consulted the Citizens Advice Bureau on 25 May 2012 to correspond with the Respondent on his behalf. He signed a mandate authorising them to do so. The Respondent failed to return NM's calls. By the date of NM's consultation with the Citizens Advice Bureau, his action had already fallen. A claim has subsequently been intimated to the Professional Indemnity Insurers of the Respondent.

8. Having heard submissions from the Fiscal that the Respondent's conduct amounted to professional misconduct and having carefully considered the facts established, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

- (1) His failure to communicate effectively with NM, by failing to deal with his correspondence and telephone calls between 15 August 2011 and 11 May 2012; and
- (2) His failure to update NM on the progress of his case despite requests to do so.

9. Following consideration of the mitigation set out in the Respondent's email the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 29 October 2015. The Tribunal having considered the Complaint against Daniel O'Neill, 5 Harmony Place, Glasgow at the instance of the Council of the Law Society of Scotland; Find the Respondent guilty of professional misconduct in respect of his failure to a) communicate effectively with this client NM by failing to deal with his correspondence and telephone calls between 15 August 2011 and 11 May 2012 and b) to update his client NM on the progress of his case despite requests to do so; 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)

Alistair Cockburn

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

Alistair Cockburn
Chairman

NOTE

The Respondent was not present at the hearing on 29 October 2015. He had submitted to the Tribunal office an email setting out his position with regard to the Complaint. The Fiscal for the Complainers moved to amend the address for the Respondent on the Complaint and this was granted. Thereafter, having heard evidence from the Depute Clerk regarding service of the Complaint and Notice of Hearing, the Tribunal resolved to hear and deal with the Complaint in the Respondent's absence.

Given the extent of the admissions of the averments of fact and duty, no evidence required to be led. The Fiscal had lodged a List of Productions, together with an Affidavit.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal referred to his Productions, indicating that they followed the pattern set out within his averments within the Complaint. The Affidavit of NM set out what was averred in the Complaint. Effectively the Respondent had been instructed to represent NM in a personal injuries action. The Respondent had raised Sheriff Court proceedings and had these served. Nothing further was done. More than one year and one day had passed prior to NM consulting the Citizens Advice Bureau and so the instance of the Sheriff Court action had already fallen at that stage. If the Respondent had however responded to any of the emails sent by NM previously he might have tumbled to the fact that something needed to be done and might have minuted for decree given that no Answers had been lodged.

The Fiscal confirmed that NM did not intend to enter this process and that he had been awarded compensation of £3250 by the SLCC. This sum had been paid by the Respondent. Additionally, NM had raised a professional negligence claim against the Respondent's former firm. The Fiscal believed that the firm's insurers were dealing with this claim and that they took the view that the figure of £3250 was sufficient compensation in the circumstances.

The Fiscal lodged copies of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008 and the Law Society of Scotland Practice Rules 2011, as referred to in the Complaint.

The Chairman drew the Fiscal's attention to his Production No 10, which included the mandate signed by NM in favour of the Citizen's Advice Bureau. That mandate authorised the Citizen's Advice Bureau to act on behalf of NM and authorised them to request information from any third party. Neither the accompanying letter nor the mandate instructed the Respondent to produce his file. The Chairman also drew the Fiscal's attention to Article 4 of the Complaint, in that there was no averment of professional misconduct in relation to failing to respond to a colleague.

The Chairman asked the Fiscal to clarify the position in relation to the suggestion that the client's claim had fallen. He questioned whether or not the prescriptive period had been interrupted by the Sheriff Court action and subsequently recommenced by the falling of the instance. The Fiscal in response indicated that his primary position was that the instance of the court action fell and that he did not insist on the averment that the actual claim itself came to an end. The Fiscal further conceded that he would not insist on Article 4.1(b) ie the failure to implement a mandate.

The Chairman asked the Fiscal to clarify his position with regard to Article 4.1(d), relating to the failure to minute for decree. He suggested to the Fiscal that this was equiparating the question of negligence with misconduct. He drew the Fiscal's attention in particular to his wording of paragraph 4.1(d). The Fiscal indicated that he did not believe he could amend the Article given the absence of the Respondent. He submitted that that was why he had averred in Article 4 that the acts or omissions constituted professional misconduct singularly or in cumulo.

The Fiscal confirmed to the Tribunal that there had been no other matters before the Tribunal for the Respondent. He submitted that the conduct was at the lower end of the scale of misconduct.

DECISION

The Tribunal had before it extensive admissions on the part of the Respondent. It was however a matter for the Tribunal to consider whether that conduct amounted to professional misconduct.

The Respondent admitted failing to communicate with his client between 15 August 2011 and 11 May 2012, a period of nine months. The Affidavit disclosed 21 separate telephone calls during that time. This represents persistent failure to communicate with his client. Clearly his conduct fell well below the standard to be expected of a competent and reputable solicitor, and could only be considered as serious and reprehensible.

Likewise for the same period of time the Respondent had failed to update the client of the progress of his case.

In these circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect of these two elements of the Complaint.

Despite the Respondent's admission, the Tribunal was satisfied that the mandate in favour of the Citizens Advice Bureau was not in terms that would support a finding of professional misconduct as suggested in the Complaint as the mandate authorised the Citizens Advice Bureau to do something rather than requiring the Respondent to do something.

The Tribunal did not accept that one instance of failing to minute for decree would support a finding of professional misconduct.

The Respondent's email had set out his mitigation in connection with this matter. Whilst the Tribunal did not accept that this conduct was at the absolute lowest end of the scale of misconduct given its persistence, having taken into account the Respondent's previous good record, and the payment already made to NM, it concluded that the matter could be dealt with by way of a Censure. This appeared to be an isolated incident. The Respondent, although late in the day, had submitted an

email containing extensive admissions. Given that there was no suggestion of any other disciplinary matters relating to the Respondent, there did not appear to be any risk to the public requiring any element of supervision. There was no request for compensation.

The Fiscal for the Complainers sought an award of expenses, which was granted. The usual order was made with regard to publicity.

Alistair Cockburn
Chairman