

**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**

**against**

**FREDERICK NEIL  
WATERMAN, Solicitor,  
Waterman's Solicitors, The Oval  
Office, 83 The Shore, Edinburgh**

1. A Complaint dated 17 September 2013 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Frederick Neil Waterman, Solicitor, Waterman's Solicitors, The Oval Office, 83 The Shore, Edinburgh (hereinafter referred to as "the Respondent") be required to answer the allegations contained in the statement of facts which accompanied the Complaint and that the Tribunal should issue such order in the matter as it thinks right.
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 December 2013 and notice thereof was duly served on the Respondent.
4. The hearing took place on 6 December 2013. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The

Respondent was present and represented by William Macreath, Solicitor, Glasgow. Three Inventories of Productions were lodged, one on behalf of the Complainers and two on behalf of the Respondent.

5. Ms Johnston made a motion to delete Article 6.2 of the Complaint and re-number Article 6.3 accordingly and replace the words “continued to breach” with “repeatedly breached”. The Tribunal agreed to the Complaint being amended accordingly. Mr Macreath confirmed that the Respondent pled guilty to the averments of fact, averments of duty and averments of professional misconduct in the Complaint as amended.

6. In respect of these admissions no evidence was led and the Tribunal found the following facts established

6.1 The Respondent was born on 8 March 1950. He was enrolled as a solicitor on 13 February 1997. He was an employee then an Associate with Connor Malcolm Solicitors from 25 February 1997 to 31 December 1999. He thereafter became a sole practitioner in the firm of Waterman’s Solicitors.

6.2 The Complainers became aware in 2011 that the Respondent was claiming that his firm was “Scotland’s Leading Personal Injury Solicitors”. Following enquiry they submitted a Complaint Form to the Scottish Legal Complaints Commission in March 2012 relating to the matter and submitted another Complaint Form in July 2012 when further matters came to be included. The SLCC considered the Complaints and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate.

6.3 On both 3 April and 26 July 2012 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act Section 47(1) to investigate complaints relating to the conduct

of enrolled Solicitors. The Respondent was advised that the complaint was based on consideration of a possible breach of Rule B3.5(a) of the Advertising and Promotion of the Law Society of Scotland Practice Rules 2011 and, additionally that any breach of the above Rule was a contravention of the spirit of the undertaking dated 21 July 2011 given by the Respondent to the Complainers.

- 6.4 The Complainers first wrote to the Respondent on 9 June 2011. He was asked to provide an explanation for his firm's claim to be "Scotland's Leading Personal Injury Solicitors" for the consideration by the Rules and Waivers Sub Committee at its meeting on 1 July 2011. The Respondent provided an explanation in writing on 13 June 2011. The Sub Committee wrote to him on 14 July 2011 seeking a written undertaking from him that he would cease the claim to be Scotland's Leading Personal Injury Firm and remove the claim from his firm's website and any other promotional material. In return for the written undertaking the Sub Committee advised that no formal written Notice would be served in terms of Rule 9 of the Solicitors (Scotland) (Advertising and Promotion) Practice Rules 2006. The Respondent provided a personal undertaking dated 21 July 2011 in the following terms:-

"I, hereby undertake to remove the words "Scotland's Leading Personal Injury Solicitors" from our website and would advise that this wording is not used on any other of our literature or advertising material". The Respondent wrote to the Complainers' Professional Practice Department of the Society on 21 November 2011, confirming that the objectionable words had been removed and that this wording was not used in any other letters or advertising promotion materials utilised by the firm.

- 6.5 On 13 December 2011 the Complainers established that the Respondent's firm continued to advertise claiming to be *inter alia* "Scotland's Leading Solicitors for Personal Injury", "Scotland's No. 1 Personal Injury Lawyers", "Scotland's No.1 in Personal Injury Compensation" and "The Leading Personal Injury Solicitors" in a number of locations across Scotland. The Sub Committee wrote to the Respondent on 8 February 2012, serving a Notice in terms of Rule B3.7.1 of the Law Society of Scotland Practice Rules 2011. The Sub Committee deemed that the claims contravened Rule B3.5(a) and required the Respondent forthwith to withdraw all the wording of the claims noted from the website and any other of the firm's literature and advertising material and required that there be no repetition of the claims or similar claims until the Notice was specifically terminated. No written representations were received from the Respondent in terms of Rule B3.7.2.
- 6.6 On 27 February 2012 material was found on the social network "Linkedin" profile in relation to one of the firm's employees. It contained material in breach of the rules and was drawn to the Respondent's attention. On or about 2 April 2012 material of a similar nature was on a Google link and on 6 February 2013 further documents containing similar unacceptable materials were found on the internet. The new material was in similar terms to that which had been deemed unacceptable by the Rules and Waivers Sub Committee and was the subject of the Respondent's undertaking. In a written response to the complaint dated 8 August 2012 the Respondent stated that he had reviewed matters and obtained Senior Counsel's Opinion. He agreed that the new material from November/December 2011 may have been capable of being construed as not within the spirit of his undertaking. The new material was the old material reconstituted. The Respondent accepted that he had been "pushing the boundaries" in terms of the claims contained

in the wording on the firm's website. There were on-going problems with the Respondent's advertising and promotional materials claiming his firm was "the leading firm in Scotland specialising in all claims" and "Scotland's number one non-fault accident solicitors" continuing to appear on the internet up to 6 February 2013.

6.7 The Complainers compiled an Investigation Report, a copy of which was intimated to the Respondent in a letter dated 15 March 2013.

6.8 By letter dated 4 April 2013 the Complainers provided a Supplementary Report to the Respondent and intimated that the Complaint would be considered by the Professional Conduct Sub-Committee on 25 April.

6.9 On 25 April 2013 the Complainers' Professional Conduct Sub-Committee considered the matter and determined that the Respondent's conduct appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor, that it appeared to be capable of being proved beyond reasonable doubt and could thus amount to professional misconduct. It further determined that the Respondent should be prosecuted before the Scottish Solicitors Discipline Tribunal.

7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his repeated breach of the Advertising and Promotion Practice Rules 2011, Rule B.3.5(a) over a period of 20 months from 21 July 2011 in advertisements and promotional materials which contained inaccurate or misleading statements, in contravention of the spirit of an undertaking given by him to the Complainers dated 21 July 2011.

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

Edinburgh 6 December 2013. The Tribunal having considered the Complaint dated 17 September 2013 at the instance of the Council of the Law Society of Scotland against Frederick Neil Waterman, Solicitor, Waterman's Solicitors, The Oval Office, 83 The Shore, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his repeated breach of the Advertising and Promotion Practice Rules 2011, Rule B.3.5(a) over a period of 20 months from 21 July 2011 in advertisements and promotional materials which contained inaccurate or misleading statements, in contravention of the spirit of an undertaking given by him to the Law Society dated 21 July 2011; Censure the Respondent; Fine him in the sum of £5,000 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 and may but has no need to include the names of anyone other than the Respondent.

**(signed)**

**Douglas McKinnon**

**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**

**Douglas McKinnon  
Vice Chairman**

**NOTE**

The Respondent pled guilty to all aspects of the Complaint as amended. No evidence was accordingly required.

Three Inventories of Productions were lodged, one on behalf of the Complainers and two on behalf of the Respondent.

**SUBMISSIONS FOR THE COMPLAINERS**

Ms Johnston stated that problems with the Respondent's advertising were brought to the attention of the Law Society on 1 June 2011. She referred the Tribunal to Production 1 in the Inventory of Productions for the Complainers which was an email from Bruce Ritchie of the Law Society to the Professional Practice Committee. This email enclosed downloaded information from the website of the Respondent's firm which seemed to contain doubtful claims. Ms Johnston referred the Tribunal to pages 2 to 5 of the said Inventory containing downloaded material from the website and pointed out that each page is headed up "*Scotland's number 1 personal injury lawyers*". Ms Johnston referred to page 3 of that Inventory where it is stated in bold type "*Scotland's leading personal injury firm*".

Ms Johnston stated that the Professional Practice Committee met on the 2 June 2011 and decided that the firm should be asked to explain the basis of their claims. The minute of that meeting is found at page 6 of the said Inventory.

Ms Johnston referred the Tribunal to Articles 4.3 to 4.5 of the Complaint and stated that Mr Ritchie of the Complainers wrote a letter on 9 June 2011 to the Respondent asking for an explanation. That letter is found at page 7 of the said Inventory. Ms Johnston referred the Tribunal to the Respondent's reply which is found at Production 5 of the said Inventory contained within a letter dated 13 June 2011. The Respondent's position at that time was that he felt that the use of the term "leading firm" was fully justified for the reasons explained in that letter.

Ms Johnston stated that this position was not accepted by the Professional Practice Sub Committee and the Respondent was asked to provide an undertaking that his firm would stop making claims to be Scotland's leading personal injury firm and remove such claims from its website and other promotional material. Ms Johnston advised that the view of the Sub Committee is contained in the letter dated 14 July 2011 found at pages 10 to 11 of the said Inventory.

Ms Johnston advised that by letter dated 21 July 2011 the Respondent provided the undertaking requested and that is found at page 13 of the said Inventory.

Ms Johnston stated that what happened thereafter is what is at the heart of the complaint. Ms Johnston stated that despite the undertaking being given the claims were merely reworded. Ms Johnston referred the Tribunal to pages 14 to 23 of the said Inventory from which it was clear that the phrases "Scotland's number 1 in personal injury compensation", "Scotland's leading solicitors for Personal Injuries", were being used. Also a number of webpages stated that the firm was "The personal injury solicitors in" a number of different cities such as Aberdeen and Stirling. Ms Johnston stated that these webpages indicated that the firm had offices throughout Scotland covering the likes of Dundee, Aberdeen and Stirling when this is not the case.

The Law Society then wrote to the Respondent by letter dated 8 February 2012 which is found at Production 10 of the said Inventory, at pages 26 and 27. This was a formal notice indicating a breach of the undertaking and requiring the Respondent to withdraw the relevant advertising material forthwith.

Ms Johnston advised that thereafter Article 4.5 of the Complaint gives details of further matters which the Society deemed to be in breach of the Advertising Rules. Ms Johnston referred the Tribunal to Production 11, an email dated 27 February 2012 from Bruce Ritchie of the Complainers to the Respondent regarding this additional material. The email required the "LinkedIn" profile to be removed.

Ms Johnston stated that concern was raised regarding the wording on a Google link which was brought to the Respondent's attention. Ms Johnston advised that an

example of that is found in Production 16 at pages 40 to 45 which was downloaded from the internet on 11 January 2013. Ms Johnston referred to page 44 where the company is referred to as "Scotland's number one non fault accident solicitors".

Ms Johnston stated that the Law Society took the view that this advertising was in clear breach of the undertaking. The Society took the view that this was a blatant and repeated breach of the undertaking which was repeated over a significant period.

### **SUBMISSIONS FOR THE RESPONDENT**

Mr Macreath stated that the Respondent was aged 63 and had been a solicitor for 16 years being a successful property developer prior to that. Mr Macreath advised that the Respondent only acts for pursuers, does not accept cases from accident advisory firms and his business solely involves people contacting him direct. Mr Macreath lodged an Inventory of Productions for the Respondent containing a number of testimonials.

Mr Macreath stated that Ms Johnston had said that the breach continued through 2012. He stated that it was clear that Stella McCraw of the Professional Practice Department decided on 8 February 2012 to refer the matter to the SLCC. Mr Macreath referred the Tribunal to Complainer's Production number 9 at page 24 of the Complainer's Inventory of Productions. He stated that this email provided instructions from Ms McCraw to Mary McGowan to refer the matter to the SLCC at that point.

Mr Macreath referred the Tribunal to Production 1 in the Second Inventory of Productions for the Respondent, a letter from Bruce Ritchie to the Respondent dated 8 February 2012. In that letter Mr Ritchie spoke of the undertaking given in 2011 and in the first paragraph stated that the continued claims being made were brought to the attention of the Rules and Waivers Sub Committee. In the second paragraph of that letter he stated that the Sub Committee noted that the wording previously objected to was modified but agreed that the meaning and intent of the revised wording remained the same and was objected to for the same reasons. Mr Macreath stated that it was

accepted by the Respondent that he is guilty of repeatedly breach the undertaking between 21 July 2011 and 6 February 2013.

Mr Macreath submitted that the rules allow for wide advertising of legal services. He stated that firms regularly advertise now on TV and radio. In relation to Rule 4 referred to at page 4 of the Complaint, Mr Macreath stated that firms can only advertise a specialism if they have one. He submitted that there was no doubt that the Respondent's firm specialised in personal injury work. Mr Macreath suggested that it would have been possible in terms of the rules to use the words "one of the finest" or "one of a leading". He submitted that it is normal for a solicitor to check with the Rules and Waivers Sub Committee about what wording is acceptable. In relation to the other matters complained of, the use of the geographical terms, Aberdeen, Stirling etc. Mr Macreath stated that it is difficult to justify these claims. He stated that one would expect there would have to be an office or a presence in these areas and it is more difficult if the firm only has a correspondence address or telephone number. He accepted that it was misleading and it could be deemed objectionable, in particular when an undertaking had been given.

Mr Macreath stated that when he was instructed and gave his opinion to the Respondent he advised that the Complaint was well founded. He stated that the Respondent accepted his opinion. Mr Macreath stated that the Respondent then obtained an opinion from Andrew Hadjucki QC which accorded with this advice albeit that the conclusions were reached separately. Mr Macreath advised that the Respondent has taken steps now to resolve the issue.

Mr Macreath stated that prior to removing the advertising the Respondent had written to the Complainers detailing his position in relation to why he considered that he could make the "*leading*" claims. Then on 14 July 2011 Mr Ritchie wrote to the Respondent advising that the Committee had taken the view that he had to remove these claims from his website and also drew attention to the wording on his letterheads. The Respondent gave the undertaking on 21 July 2011.

Mr Macreath advised that on 21 November 2011 the Respondent wrote to the Law Society confirming that the words "Scotland's leading personal injury solicitors" had

been removed from the website and that this wording was not used in any other letter or advertising or promotional materials used by the firm. Additionally he enclosed a sample of the amended letterhead and stated that he considered his undertakings to be fulfilled and asked the Society to confirm the same in due course. No such confirmation was received.

Mr Macreath drew the Tribunal's attention to the summary of the sequence of events which was sent to the Law Society with his letter of 8 August 2012 which can be found at Productions 15 and 16 of the Second Inventory of Productions for the Respondent. He advised that the patience of the Sub Committee came to an end and they decided to refer the matter to the SLCC.

Mr Macreath stated that there was then a phone call from the Law Society to the Respondent regarding the "Linkedin" entry of 27 February 2012 saying that this was objected to. He stated that by this time the complaint had been made to the SLCC. He advised that the Respondent instructed web designers to remove the advertisements and that is explained in his letter of 28 February 2012 to Bruce Ritchie. Mr Macreath stated that some of the changes made on the web could take up to 30 days for full implementation. In relation to the branch offices, Mr Macreath advised that the Respondent accepted in the said letter that reference to these was misleading as they were really only consulting rooms and stated that the website content was being amended to reflect this. On 13 March 2012 the Respondent wrote to Bruce Ritchie referring to a recent telephone conversation and advising that he now understood the Society to consider the amendments to his website to comply with the Rules. On 2 April 2012 the Respondent received a call from the Law Society regarding a Google link ad which still referred to "Scotland's leading solicitors for personal injury". The Respondent immediately then passed this issue to his web designer to investigate and was advised that they had advertised using several hundred such advertisements and these two had slipped through the net and had not been removed by mistake.

On 3 April 2012 the Respondent held a meeting with his web designers regarding the branch office issue and asked for a meeting with the Law Society to ensure that he was resolving that issue to their satisfaction.

Mr Macreath submitted that the summary of the sequence of events demonstrated that this was not a case of a man ignoring of what he was meant to do. He submitted that the Respondent was attempting to comply with the requirements as set out in his letter of 8 August 2012 which is found in the Second Inventory of Productions for the Respondent at Production 15.

Mr Macreath advised that on 26 March 2013 the Respondent wrote to the Complaints Investigator and that letter is found at page 19 of the said Inventory. The Respondent submitted in that letter that he was not reckless in a professional sense, stating that he was not an IT expert and had made attempts to resolve matters. In that letter he apologised unreservedly for his oversight which he accepted was his responsibility.

Mr Macreath stated that the misconduct is encapsulated in Article 6.2 of the Complaint. He had made modifications but accepts that the Law Society's view was correct and that the wording remained inaccurate.

Mr Macreath submitted that the Respondent always took this matter very seriously and that he was not an IT expert and had employed web designers to rectify the advertising. Mr Macreath asked the Tribunal to hold that the Respondent's failures did not bring the profession into disrepute and to note that the advertising did not disclose any personal information regarding clients. Mr Macreath stated that the issue in this Complaint is the breach of the undertaking rather than the breach of the rules themselves. Mr Macreath stated that the Respondent accepts that his conduct amounts to professional misconduct but ultimately it is a matter for the Tribunal to decide upon.

Mr Macreath referred the Tribunal to the testimonials contained within the Inventory of Productions for the Respondent.

Mr Macreath asked the Tribunal to deal with this as leniently as possible. He submitted that the Respondent prides himself on his practice and in not buying in work or taking commissions.

In response to a question from the Tribunal as to whether the Respondent accepts that he continued to advertise in breach of the undertaking for a period, Mr Macreath stated that the Respondent did accept that but the Tribunal should note that he kept going back to the Law Society for guidance and he was not aware of the fact that a Complaint had already been made to the SLCC by that stage.

In response to another question from the Tribunal, Ms Johnston confirmed that the Law Society did not consult with the Advertising Standards Agency regarding this Complaint.

In response to a question from the Tribunal in relation to the business card at page 31 of the Inventory of Productions for the Complainers, Mr Macreath stated that Stewart Reid was a self-employed person and not an employee of the firm.

## **DECISION**

The Tribunal had regard to the definition of professional misconduct as outlined in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal noted that the Respondent had blatantly continued with misleading advertising despite having given an undertaking to his professional body to remove that advertising. The Tribunal considered that his repeated breach of that undertaking would be viewed by competent and reputable solicitors as serious and reprehensible and therefore was sufficient to meet the Sharp Test.

In considering sanction, the Tribunal noted that the Respondent had accepted that he was guilty of professional misconduct from the commencement of these proceedings and that in a legal career of 16 years, this was the first time that the Respondent had appeared before the Tribunal. The Tribunal also had regard to the testimonials submitted on behalf of the Respondent.

However, the Tribunal was concerned about the repeated breach of the undertaking and felt that the Respondent should have taken immediate steps to resolve the position to the satisfaction of his professional body. The Tribunal considered that it is an essential quality of every solicitor that he is trustworthy and honest and considered

that the main function of the advertising rules is to ensure that the public are not being misled. The Tribunal noted that when the matter was drawn to the attention of the Complainers appropriate and swift action was taken to enforce the advertising rules for the protection of the public. In view of the fact that the Respondent continued with the advertising for a significant period in the face of an Opinion from Senior Counsel stating that such advertising breached the rules, the Tribunal considers that the Respondent has brought the profession into disrepute by breaching a clear undertaking given to his professional body. In all the circumstances the Tribunal was of the view that a substantial fine was appropriate and decided to Censure the Respondent and Fine him £5,000.

The Tribunal made the usual orders for expenses and publicity.

**Vice Chairman**