

**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**

On behalf of

**SECONDARY COMPLAINER
FIRM X**

against

**KEITH GUY WILLIAM
ARMSTRONG, formerly of
Dundas & Wilson, Solicitors,
Saltire Court, 20 Castle Terrace,
Edinburgh and now c/o Levy
McRae Solicitors, 266 St Vincent
Street, Glasgow**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") on behalf of Secondary Complainer Firm X requesting that, Keith Guy William Armstrong, formerly of Dundas & Wilson, Solicitors, Saltire Court, 20 Castle Terrace, Edinburgh and now c/o Levy McRae Solicitors, 266 St Vincent Street, Glasgow (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 3 April 2014 and notice thereof was duly served on the Respondent.
4. A Joint Minute was lodged admitting the facts, averments of duty and averments of professional misconduct in the Complaint.
5. The hearing took place on 3 April 2014. The Complainers were represented by their Fiscal, Elaine Motion, Solicitor Advocate, Edinburgh. The Respondent was present and represented by Mr Macreath, Solicitor, Glasgow.
6. There was no requirement for any evidence to be led, all of the material facts being admitted.
7. The Tribunal found the following facts established
 - 7.1 The Respondent is a solicitor enrolled in the Registers of Scotland on 19 November 1996. He was employed as a solicitor at Dundas & Wilson CS LLP (D&W) on 19 February 1997 and was assumed as a partner at D&W on 1 May 2006. He resigned from D&W on 11 July 2012. Whilst remaining on the Roll of Solicitors he is not presently in employment as a Solicitor.
 - 7.2 **DUNDAS & WILSON CS LLP**

As at April 2012 the Respondent was a partner at D&W and in that position was involved in the framing of a proposed Tender for the project. The project was an initiative in which five local authorities proposed to share services for waste management

and recycling. Renfrewshire Council (RC) was one of the five local authorities involved.

7.3 The Respondent framed part of the Tender for the project which was submitted by D&W on 7 May 2012

7.4 On or around 22 May 2012 a representative of RC contacted D&W, noting that some concern had arisen in respect of certain similarities between the Tenders submitted by D&W and that submitted by another Tenderer. RC had compiled a comparison document setting out the relevant text of concern and by email of 22 May 2012 invited D&W to attend a meeting on 24 May 2012 to discuss matters. The other Tenderer, namely Firm X, was also invited to a similar meeting on that date. D&W immediately commenced an internal investigation. In the course of said investigation the Respondent admitted to D&W that he had been responsible for the text that had been highlighted and that he had plagiarised these from another Tender document for the project belonging to Firm X.

7.5 In particular the Respondent accepted that on 28 or 29 April 2012 at his dwelling house, without the permission or consent of his partner, Ms B, who was at the time a Business Development Manager at Firm X, he accessed the Tender as prepared by Firm X for the project, copied parts of said draft Tender and made use of that information when completing D&W's Tender for the project. He did so by a combination of simply copying across some text and on other occasions by adapting the text as copied. Said actions were deliberate and in relation to commercially sensitive and confidential information.

In addition by adapting the text of Firm X the Respondent displayed an intention to cover up his actions. Said admissions were made only after the e-mail from RC inviting D&W to an interview. He travelled to Glasgow on 23 May 2012 and advised the Head of Projects at D&W, Mr T of his actions as detailed above. He offered his resignation to the Managing Partner and Chairman of D&W at that time. He indicated that Firm X were an innocent party in the affair. In the circumstances D&W duly attended the meeting with RC on 24 May 2012 and withdrew their Tender.

7.6 On 28 May 2012 D&W accepted the Respondent's resignation and he left D&W formally on 12 July 2012.

7.7 **FIRM X**

The factual narrative of the Respondent's involvement is detailed in the preceding paragraphs.

7.8 Firm X prepared and submitted a Tender for the project which was valued in excess of £500,000. By e-mail of 22 May 2012 Ms C of RC contacted Firm X indicating "We have concerns that aspects of your Tender are surprisingly similar to that of another Tenderer. We have collated some examples on the attached table for your consideration, and would be grateful if you and/or your nominated Depute for the Commission could come to Renfrewshire House on Thursday at 9.30 a.m. to discuss this with us." Reference is made to paragraph 7.4 above.

- 7.9 Firm X immediately commenced an internal investigation. It reached the view speedily that it was apparent that something was not right standing the similarities of the language in the comparison table mentioned in the preceding paragraph and in paragraph 7.4. The internal investigation concluded that Firm X were Tenderer 2 in the table and that the language reflected the style of writing of the Partner who led the Tender, namely Mr A. Mr A confirmed that the words were his own, per his own dictation; that he had spent a considerable time dictating the text on 17, 19 and 20 April 2012; that the questions in the Tender were very specific and no other previous Tender which he had written provided any material assistance for the purposes of drafting it. Accordingly the responses to the questions were in essence drafted from scratch.
- 7.10 Firm X further established from the electronic properties of Firm X's Tender documents who had created, accessed, modified or printed the documents. Interviews were conducted with each of the individuals in question and staff statements were taken. That included Ms B, the Respondent's partner. The conclusion reached was that the source documentation belonging to Firm X had left their premises and been copied by somebody else.
- 7.11 On 24 May 2012 two Partners of Firm X attended a two hour discussion with RC which has been described as a "difficult experience".
- 7.12 Later on 24 May 2012 the Chairman of D&W, Mr U, telephoned the Chair of Firm X, and explained that the

Respondent had admitted that he had obtained from his partner, Ms B, as detailed above, without her knowledge or consent, the documents which formed the basis of Firm X's Tender, that he had copied and used those documents in the D&W Tender.

7.13 Firm X were not made aware of the situation prior to the meeting on 24 May 2012. As a result of the above circumstances Firm X undertook a wider investigation to try to satisfy themselves that the admitted conduct of the Respondent had not been repeated in any other Tenders in which D&W and Firm X had been involved

8. Having considered the foregoing circumstances and having heard submissions from both parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

8.1 his having accessed confidential information belonging to Firm X in relation to the project as set out above; having copied and thereafter used part of said Tender document in D&W's own Tender and his having allowed it to be submitted as the work of D&W fraudulently and/or deceitfully, bringing into question his integrity;

8.2 his actions, being deliberate, and wholly inconsistent with the requirement to maintain mutual trust and confidence with his fellow Solicitors whether within Firm X, D&W or further afield, his fundamentally misleading his own colleagues in allowing a Tender to be submitted, part of which had been plagiarised from Firm X's Tender which he knew or ought to have known was not only confidential but of a commercially

sensitive nature and his actions drawing the profession at large into disrepute.

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

Edinburgh 3 April 2014. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland on behalf of Firm X against Keith Guy William Armstrong, formerly of Dundas & Wilson, Solicitors, Saltire Court, 20 Castle Terrace, Edinburgh and now c/o Levy McRae Solicitors, 266 St Vincent Street, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his having accessed confidential information belonging to another firm of solicitors in relation to a project, having copied and thereafter used part of that firm's Tender document in his own firm's Tender and his fraudulently and/or deceitfully having allowed it to be submitted as his own firm's work bringing his integrity into question; his actions being deliberate and wholly inconsistent with the requirements to maintain mutual trust and confidence with his fellow solicitors in allowing a Tender to be submitted, part of which had been plagiarised from another firm's Tender which he knew or ought to have known, was not only confidential but was of a commercially sensitive nature and his actions drawing the profession at large into disrepute; Strike the Respondent Keith Guy William Armstrong from the Roll of Solicitors in Scotland; 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 will not include the name of Firm X or the Respondent's current employer or otherwise identify them.

(signed)

Alan McDonald

Vice Chairman

Edinburgh 3 April 2014. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland on behalf of Firm X against Keith Guy William Armstrong, formerly of Dundas & Wilson, Solicitors, Saltire Court, 20 Castle Terrace, Edinburgh and now c/o Levy McRae Solicitors, 266 St Vincent Street, Glasgow; and having considered whether it was appropriate to award compensation to the Secondary Complainer; Make no award of Compensation.

(signed)

Alan McDonald

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

IN THE NAME OF THE TRIBUNAL

Alan McDonald
Vice Chairman

NOTE

A Joint Minute was lodged admitting all the facts, averments of duty and averments of professional misconduct in the Complaint. It was explained that this Joint Minute had been entered into at an early stage.

SUBMISSIONS FOR THE COMPLAINERS

Ms Motion explained that the Secondary Complainer was not present or represented and referred the Tribunal to the Secondary Complainer's letter of 17 March 2014. Ms Motion confirmed that the Secondary Complainer was not asking for compensation and was leaving it to the Tribunal to consider whether or not it was appropriate to award any compensation in this case. Ms Motion stated that the Secondary Complainer did not wish to be identified in the Findings issued in respect of this matter as they had already suffered enough professional embarrassment.

Ms Motion referred the Tribunal to her Production 1, which sets out the extent of the plagiarism. Ms Motion emphasised that it was very important for the reputation of the profession and for the ability of the public to have confidence in the profession that this type of conduct did not occur. Ms Motion pointed out that there were 27 acts contained within the document of lifting and copying another person's work and passing it off as his own. This was not a one off act nor would it have been particularly speedy in its execution. Ms Motion pointed out that there were over 12 different pages of the document which were involved. It was a deliberate act and involved commercially sensitive and confidential information. Ms Motion submitted that the adaptation of the text which had been copied, displayed an intent to cover up the plagiarism. She referred the Tribunal to pages 1 and 4 of the spreadsheet. She advised that the 2nd column was the Respondent's wording and the 4th column was Firm X's text. Ms Motion stated that this line should not be stepped near, never mind crossed over. The true test of a solicitor was what they did in the face of temptation. Trust in the profession was at the core of what being a solicitor was all about. In this case the Respondent breached the trust of his clients, his co-workers and his colleagues. At no time prior to the plagiarism being identified did he admit his act. He allowed the work to be submitted on behalf of his firm in the full knowledge of his

plagiarism. He told no one and passed off another professional's work as his own. It was only when the Respondent was caught that he admitted what had happened. Ms Motion questioned what would have happened if this had not been found out.

Ms Motion submitted that this was very serious conduct and fell at the top end of the scale of professional misconduct. She indicated that a sanction's primary purpose was not to be punitive and referred the Tribunal to the case of Bolton-v-The Law Society 1994 2 All ER 486, where the court stated that "any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed on him by the Solicitors Disciplinary Tribunal...the most serious involves proven dishonesty whether or not leading to criminal proceedings and criminal penalties. In such cases the Tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that they be struck off the Roll of Solicitors". Ms Motion submitted that in this case there were 27 individual fraudulent and deceitful acts (pertaining to the 27 instances of copied/ plagiarised text) which would seriously damage the reputation of the profession and placed in issue the Respondent's fitness to be a solicitor. Ms Motion submitted that public confidence would be undermined if a significant penalty was not imposed. She however accepted that the Respondent had co-operated throughout the procedure. She questioned what would happen if the Respondent was under such pressures again. She submitted that the mitigation was of limited value given the overarching principles involved.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath advised that he had been instructed in the matter since 28 May 2012 and had dealt with Mr V, who was managing partner at Dundas & Wilson at that time. The Respondent had already resigned but Dundas & Wilson did not accept his resignation and treated it as a suspension. In July 2012 he was allowed to resign. Mr Macreath stated that at the start the Respondent was precluded from offering an apology to Firm X due to the terms of the agreement of the LLP Partnership. He however apologised at the earliest opportunity. Mr Macreath explained that there were acrimonious discussions between Firm X and Dundas & Wilson. Firm X had wanted to know why they had not been told on 23 May about what had occurred. The

Respondent had told Dundas & Wilson on 22 May and had provided them with full information on the morning of 23 May. This information however was not passed to Firm X until 24 May which meant that Firm X had to go and answer difficult questions at a meeting on 24 May. Mr Macreath explained that contractually the Respondent was bound to silence until a period had elapsed and then he could speak to Firm X. Mr Macreath stated that it was accepted that the conduct amounted to serious professional misconduct. A complaint was made by both Dundas & Wilson and Firm X.

Mr Macreath explained that the terms of the Complaint were subject to discussion and had been agreed and the Respondent had pled guilty from the outset. Once matters came to light the Respondent made an immediate admission and sought medical treatment. Mr Macreath stated that the complaints process had unfortunately led to delays. He explained that Dundas & Wilson withdrew their Tender on 24 May.

Mr Macreath referred the Tribunal to the two medical reports and to the testimonials lodged on behalf of the Respondent. Mr Macreath explained that it was a symptom of depression that a person would not seek help when the pressures got too great. Mr Macreath submitted that what had happened in this case was an aberration and extremely strange behaviour for the Respondent. The supplementary medical report went into the background situation of what was going on at Dundas & Wilson at the time. Mr Macreath submitted that the Respondent was in a state of despair and was overloaded at work and also going through a separation and divorce. He was living with the business development officer working for Firm X, who had also resigned. He advised that this relationship was subsisting.

Mr Macreath explained that everyone was flabbergasted by the Respondent's behaviour, which was so out of character. Mr Macreath referred particularly to the testimonial from a partner at Dundas & Wilson. Mr Macreath explained that the Respondent had retained and renewed his practising certificate because he wanted to leave it in the hands of the Tribunal as to what happened about this. He was presently working in-house for a large company in his own area of expertise but not as a solicitor.

At the time the conduct occurred the Respondent was involved in a number of Tenders and was also running a team of depleted staff. He was an expert in energy and waste management. Mr Macreath submitted that Tenders tend to follow a style but it was accepted that the Tender from Firm X was prepared on the basis of original thought. What had happened in this case was that the Respondent had by chance seen the Tender lying on the dining room table. He had only looked at the non-financial sections of the Tender. Mr Macreath submitted that it was not 27 incidents of plagiarism but one act of plagiarism in connection with one document. It was accepted that there was deceit and cover-up which was a most serious act, however this occurred within a large firm where any admission of failure or weakness would be death in the partnership. The Respondent had asked for help but this had not materialised. He had been having headaches and was not sleeping and was not coping. Mr Macreath referred the Tribunal to page 19 of Paterson & Ritchie, Law Conduct and Practice for Solicitors in connection with factors going to mitigation. He stated that there were very difficult targets to meet within Dundas & Wilson and when a managing partner left he had to do a lot of travelling on top of everything else. The Respondent was tied into a contract which required one year's notice and so could not leave. He knows that he should have removed himself from the situation. Mr Macreath submitted that the blatant nature of the plagiarism was a cry for help. The person who was assisting the Respondent on the Tender had been removed from the project 10 days before.

Mr Macreath stated that the Respondent had no intention of returning to private practice and confirmed to the Tribunal that they expected the worst today. Mr Macreath however stated that the Respondent was happy to give an undertaking not to return to private practice.

In response to a question from the Tribunal, the Respondent confirmed that the part of the Tender that he saw was the waste specific matters and not any financial information. He confirmed that he was not involved in the pricing part of the Tender. The Respondent confirmed that his partner Ms B did not know that he had looked at the document.

In response to a question from the Tribunal as to how the Tribunal could be assured that this would not happen again, the Respondent stated that if he came under stress again he would go back and see his consultant. He explained that the experience had given him a large degree of self-awareness and knowledge and he would now have the strength to step away from a situation. He indicated that he would resign if a similar situation arose again. He explained that his partner had the Tender at home because she was working on it.

In response to another question from the Tribunal it was confirmed that this matter was an isolated case.

DECISION

The Tribunal had no hesitation in concluding that the Respondent's conduct amounted to professional misconduct. It is an absolutely essential quality of a solicitor that he be trustworthy, honest and act with personal integrity. Solicitors must also act with other solicitors in a manner consistent with persons having mutual trust and confidence in each other. In this case the Respondent took information from another professional's confidential document which was commercially sensitive and put it into the document of his own firm when his firm was a direct competitor in the same Tender process. The Respondent did this deliberately for his own personal survival. In doing this not only did the Respondent act fraudulently and deceitfully he also breached the trust of his own partners, partners in another firm and his personal partner, Ms B. The Tender contract concerned was worth in excess of £500,000. What the Respondent did had the potential to damage the reputation of his own firm, Firm X and Ms B. The Tribunal consider that in these circumstances the Respondent's conduct fell at the very serious end of the scale of professional misconduct. His conduct is so grave it is very likely to bring the profession and the firms involved into disrepute. It also adversely affects the confidence that Councils would have in these firms of solicitors.

Although the Tribunal note that the Respondent owned up as soon as the plagiarism was discovered, he did not own up before this and allowed the Tender document to be submitted as his own firm's work.

The Tribunal accept that the Respondent was working at the time in a very pressurised environment which had an effect on his mental health but he must have been aware that what he was doing was professionally completely unacceptable. The Tribunal also accept that it was one act of plagiarism involving one document rather than twenty seven separate acts. The Tribunal have taken account of the medical reports produced and the testimonies provided on behalf of the Respondent. The Tribunal accept that the conduct was out of character for the Respondent and may have been an aberration. The Tribunal also took account of the fact that the Respondent has fully cooperated with the proceedings and has shown remorse and insight since the conduct occurred.

The Tribunal did not consider that supervision would have picked up what happened in this case and could not be satisfied that if the Respondent came under similar pressures again something similar may not occur. The Tribunal noted the medical reports but also noted that the Respondent was not suffering from any diagnosed psychological illness. The Tribunal had some sympathy for the Respondent's situation in relation to his work pressures but he should have resigned rather than carry out such an unacceptable act totally contrary to the whole ethos of being a solicitor. The Tribunal deliberated long and hard with regard to whether or not the mitigating factors in this case could result in a penalty falling short of striking the Respondent's name from the Roll; in particular, whether a period of suspension might be sufficient in the circumstances of this case. The Respondent's actions however were of such a serious nature, that, given the public message and message to the profession that requires to be sent out, the Tribunal did not consider that it had any alternative other than to strike the Respondent's name from the Roll of Solicitors. The Tribunal has reminded itself that the solicitor's profession and reputation depend fundamentally upon trust. The Tribunal considers that to do anything other than to strike the Respondent's name from the Roll for actions such as these would seriously damage the reputation of the legal profession. The Tribunal does not do this lightly and recognise the catastrophic effect this one major error of judgement will have had on the Respondent's life.

In connection with compensation, the Tribunal noted that the Secondary Complainer was no longer requesting compensation. There was no evidence before the Tribunal to allow the Tribunal to quantify any losses which occurred as a direct result of the Respondent's conduct to allow an award of compensation to be made and accordingly made no award of compensation.

The Tribunal made the usual order with regard to expenses. In connection with publicity, both parties asked the Tribunal to refrain from including the name of Firm X in the publicity to avoid any further professional embarrassment. The Respondent's representative also asked that the Tribunal do not include the name of the Respondent's current employers. The Tribunal considered, in terms of paragraph 14A of the Solicitors (Scotland) Act, that it could direct that no publicity be given to Firm X or the Respondent's current employers on the basis that to do so would adversely affect someone other than the Respondent, his partners or family.

Alan McDonald
Vice Chairman