

**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**

Complainers

against

**STEVEN JOHN DOCHERTY, Wright Johnston
& Mackenzie LLP, St Vincent Plaza, 319 St
Vincent Street, Glasgow**

Respondent

1. A Complaint dated 8 July 2024 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Steven John Docherty, Wright Johnston & Mackenzie LLP, St Vincent Plaza, 319 St Vincent Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. Following sundry procedure, on Joint Motion, the Tribunal set down an in-person hearing for 20 March 2025. Notice thereof was duly served on the Respondent.
5. At the in-person hearing on 20 March 2025, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by Alastair Duncan, KC, instructed by Martin Stephen, Solicitor, Glasgow. A Joint Minute between the parties was lodged which agreed all of the averments of fact within the Complaint together with

all of the averments made by the Respondent in answer thereto. No evidence required to be led. Both parties made submissions.

6. The Tribunal found the following facts established:-

- 6.1 The Respondent was born on 22 October 1974. He commenced employment with ‘Wright, Johnstone & Mackenzie LLP’ hereafter known as the “the firm” on 1 September 1997. The Respondent is currently a partner at the firm and holds a practising certificate.
- 6.2 The Secondary Complainer served a court action against Company A seeking payment of £5000 with expenses and interest in relation to their installation of a defective boiler which was installed under a government granted scheme. The Respondent acted for Company A.
- 6.3 On around 11 December 2021, the Secondary Complainer proposed that his claim be settled in the sum of £7,213.40. On 1 February 2022, after sundry further procedure and discussion, Company A instructed the Respondent and his assistant to agree to the figure proposed by the Secondary Complainer “in full and final settlement of [] and that no further action will be taken against [Company A].” The instruction then said this: “The wording needs to be bulletproof to ensure that no further claims for anything else. We do not want to return to the property for anything.” A hearing in the case was due to take place just 3 days later, on 4 February 2022. In further instructions to the Respondent on 1 February 2022, Company A repeated the instruction to offer the amount sought by the Secondary Complainer but instructed that preparations ought to continue to be made for the hearing. Later that day, the Respondent and his assistant met to discuss the content of the letter to go to the Secondary Complainer. In order to ensure that the proposal fully met the instructions from the client, the four conditions set out in the letter of 1 February 2022 to the Secondary Complainer were included. The Respondent’s assistant prepared a draft of the letter. The Respondent revised it, and it was sent out in the form narrated in the complaint form. In particular, it included, at condition 4, a requirement that any complaint against WJM and/or the Respondent’s assistant be withdrawn. The Secondary Complainer had taken a particularly contentious approach to the conduct of the litigation. He had complained to the SLCC about WJM and the Respondent’s assistant.

- 6.4 The Respondent sent a letter to the Secondary Complainer on 01 February 2022, the terms of which are as follows:

“We refer to the above action in which we act. With a view to settling matters and without making any concessions or admissions as to liability, we are instructed to confirm that our clients would be agreeable to making payment of £7,213.40 (‘the Settlement Sum’) to you, being the costs set out in your letter of 11 December 2021, in full and final settlement of your client and on the terms set out in this letter.

The terms on which the Settlement Sum would be paid, and which are non-negotiable are:

- 1. You will abandon the above action against [Company A], and your wife will abandon her claim against [Company B] under court reference number STR-SG45-21 (together referred to as ‘the Court Actions’), in each case with a finding of no expenses being found due to or by either party.*
- 2. By accepting this Settlement Sum, you and your wife will be warranting to our clients that the Settlement Sum represents full and final settlement of any and all claims, of whatever nature, that either you or your wife might have against our clients or against [Company B], whether as referred to in the Court Actions or otherwise, and that neither you nor your wife will raise any further claims against [Company A] or [Company B] in respect of such matters for all time coming, and that you have not assigned or otherwise transferred the right to pursue any such claims to any third party.*
- 3. The existence and terms of this agreement, and of the facts and circumstances which gave rise to the Court Actions, and of the disposal of the Court Actions, and any other matters that have arisen between the you and your wife on the one hand, and our clients and [Company B] on the other hand, up to today’s date are to be kept strictly private and confidential, meaning that neither you nor your wife can disclose them to any other party except as may be required by law or for the purposes of obtaining legal advice; and*
- 4. You will withdraw any and all complaints raised in relation to this matter, to include any complaint to the Scottish Legal Complaints Commission, in relation to the role of Wright, Johnston & Mackenzie LLP and/or [IW].*

This offer remains open for acceptance, in writing, until close of business on Thursday 3 February 2022.”

- 6.5 The Secondary Complainer rejected the terms of the Respondent’s letter on 04 February 2022.
- 6.6 The Secondary Complainer lodged a complaint with the Scottish Legal Complaints Commission on 23 October 2021, this complaint related to a number of matters, primarily in relation to the work of a colleague who was a colleague of the Respondent. The contents of the aforementioned letter of 01 February 2022 was considered afterwards by the Scottish Legal Complaints Commission as a supplementary issue.
- 6.7 The inclusion of condition 4 within the letter of 1 February 2022 created a potential conflict of interest on the part of the Respondent. At the time of revising and sending the letter, the Respondent overlooked this. The Respondent acknowledges that he ought not to have done so and that he ought to have recognised the correct position. For that reason, the Respondent did not seek to challenge the recommendation made by the Reporter to the principal complainer’s Professional Conduct Sub-Committee that a finding of unsatisfactory professional conduct be made. The Respondent’s intention at the time of sending the letter of 1 February 2022 had been to do two things. First, he was concerned to ensure that the conditions placed upon the proposal met the client’s clear instruction to bring an end, once and for all, to all and any claims on the part of the Secondary Complainer and his wife. While it is accepted that it was the client’s lawyers who principally stood to benefit from condition 4, the Respondent did have a concern that his client could become embroiled in any complaint proceedings that eventuated. Secondly, the Respondent was anxious to ensure that the proposal reached the Secondary Complainer prior to the forthcoming hearing. For that reason, the Respondent sent the letter directly to the Secondary Complainer without first running a draft past his client. Inclusion of condition 4 in the letter did not in fact impact upon the interests of the Respondent’s client.
7. Having given careful consideration to the foregoing facts and the submissions of both parties, the Tribunal found the Respondent not guilty of professional misconduct and remitted the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the 1980 Act.

8. Having heard further submissions from both parties in relation to expenses and publicity, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 20 March 2025. The Tribunal having considered the Complaint dated 8 July 2024 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Steven John Docherty, Wright Johnston & Mackenzie LLP, St Vincent Plaza, 319 St Vincent Street, Glasgow; Finds the Respondent not guilty of professional misconduct; Remits the Complaint to the Council of the Law Society of Scotland in terms of Section 53ZA of the Solicitors (Scotland) Act 1980; Finds the Complainers liable in the expenses of the Respondent 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, restricted by 50%; and Directs 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)

Vincent McGovern

Acting Vice Chair

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 10 APRIL 2025.

IN THE NAME OF THE TRIBUNAL



Vincent McGovern
Acting Vice Chair

NOTE

At the Hearing on 20 March 2025, the Tribunal had before it the Complaint, Answers and Joint Minute, including an Affidavit for the Respondent with supporting documents. The Fiscal invited the Tribunal to make a minor amendment to paragraph 4.2 of the Complaint. This motion was not opposed and was granted. The Joint Minute agreed all of the averments of fact within the Complaint, all of the averments within the Answers thereto for the Respondent and that the background circumstances to the potential conflict were as set out within the Affidavit and documents attached to the Joint Minute. Accordingly, no evidence required to be led, and parties proceeded to make submissions.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal invited the Tribunal to make findings in fact in terms of the Joint Minute. He explained that there was one averment of professional misconduct within the Complaint, that the Respondent acted in a potential conflict when he added condition 4 to the offer of settlement. It was the Complainers' position that the Secondary Complainer should not have been asked to withdraw any complaint as a condition of settling the litigation.

The Complaint contains one averment of duty, a breach of Rule B1.7.1 of the Practice Rules 2011. The Fiscal submitted that, having regard to the interests of the firm in the Secondary Complainer withdrawing the complaint, the Respondent acted in a clear conflict. He referred the Tribunal to the Respondent's Answer at paragraph 6.2 where it was said that given the necessity to act quickly, the Respondent did not obtain his client's agreement to include condition 4 and that the Respondent interpreted his existing instructions to bring everything to a conclusion as including the Secondary Complainer's complaint. The Fiscal submitted that the Respondent should have applied his mind to the circumstances and seen that the withdrawal of the complaint was only to the benefit of the firm and not to his client. The Respondent's actions introduced the possibility of the settlement being derailed. The Respondent should not have required his client's instructions on inserting that condition as the it should never have been included in the offer in the first place.

He stated that the question whether the conduct amounted to professional misconduct or not is a matter for the Tribunal and what the reporter or Sub Committee made of the conduct was not relevant.

The Fiscal referred the Tribunal to the case of The Council of the Law Society of Scotland-v-Mark Thorley [20 August 2020] and The Council of the Law Society of Scotland-v-Graeme C Miller [6

February 2023] and submitted that both cases were relevant to the question of professional misconduct in this case.

He submitted that there was little doubt that the Respondent had acted without full consideration of the implications of his conduct and had not considered the question of a conflict of interest. He invited the Tribunal to find the Respondent guilty of professional misconduct.

In answer to a question from the Tribunal, the Fiscal conceded that the degree of culpability demonstrated in the case of Thorley was more pronounced than in the present case but he emphasised that the onus was on the Respondent to identify any potential conflict.

SUBMISSIONS FOR THE RESPONDENT

Mr Duncan explained that he would make submissions in four parts: (1) Framing the issue, (2) referring to the relevant law and practice, (3) referring to the background circumstances, and (4) final submissions.

1. Framing the issue

He submitted that this was a case about a potential conflict of interest and whether what was described by the Fiscal discharged his onus of establishing professional misconduct.

2. Relevant law and practice

Mr Duncan submitted that Rule B1.7.1 of the 2011 Practice Rules was the wrong rule. He emphasised that the relevant rule was B1.7.2.

He submitted that the test for professional misconduct was that set out in the case of Sharp-v-The Council of the Law Society of Scotland 1994 SLT 313. He emphasised that the departure from the required standard of conduct required to be serious and reprehensible having regard to the whole circumstances of the case. He argued that the gravity of the failure and the culpability of the solicitor were relevant considerations. He referred the Tribunal to the case of The Council of the Law Society-v-J 1991 SLT 662 which concluded that it could not be said that the question of prejudice was irrelevant to establishing professional misconduct. He submitted that the effect of what the Court in that case was saying was that it is relevant to consider here if there was any impact as a result of the inclusion of condition 4.

3. Background circumstances

Mr Duncan took the Tribunal through the Respondent's Affidavit. He highlighted that the Secondary Complainer's complaint was against a young and inexperienced colleague of the Respondent. The Secondary Complainer had complained about a delay in the provision of a hard copy of the client's reply to the Secondary Complainer's claim, where the delay was only six days and did not materially affect the Secondary Complainer's time to respond. The Secondary Complainer made a second complaint claiming that a solicitor had failed to include a paper apart referred to in a motion in the intimation of the motion to the Secondary Complainer. Neither complaint was successful. Mr Duncan invited the Tribunal to consider whether the Secondary Complainer in fact saw his complaints as a tactic in the litigation and referred the Tribunal to the tenor of the Secondary Complainer's letter of complaint. He submitted that the Secondary Complainer's complaint was part of a bigger picture of contentious behaviour on his part. He drew the Tribunal's attention to the courteous terms of the Respondent's correspondence with the Secondary Complainer at all times.

Mr Duncan emphasised that there was a need for speed in sending out the offer of settlement. It had to be posted, not emailed. The client wanted "shot" of the case. The Respondent genuinely felt that he had to close off all issues quickly, including a complaint that might lead to his client becoming involved. The client had instructed a "bulletproof" settlement. Plainly in hindsight, the condition was to the benefit of the professional but, at the time of the offer of settlement was framed, the Respondent was operating under a degree of urgency and genuinely thought that was what the client wanted. A second offer of settlement was made in June 2022. The Respondent sent a draft to his client and drew condition 4 to his client's attention. Prior to that, no one had flagged up any issue regarding condition 4 with the Respondent. By the time of the draft in June 2022, the Respondent had recognised the potential issue and he drew it to his client's attention.

Mr Duncan emphasised that there was in fact no impact upon the Secondary Complainer. The Secondary Complainer made no reference to condition 4 at all.

4. Final submissions

Mr Duncan invited the Tribunal to consider the issues of gravity, culpability and impact.

With regard to culpability, the Respondent genuinely believed he was giving effect to his clients' instructions. Additionally, the complaint was not against the Respondent himself. There was no question of the Respondent deliberately putting his own personal interests ahead of his clients'.

With regard to gravity and impact, Mr Duncan emphasised that at no point did the Respondent act in an actual conflict. Ultimately, condition 4 of the offer made no difference to the settlement negotiations.

Mr Duncan submitted that this case came “nowhere near” meeting the Sharp test and he invited the Tribunal to draw a comparison between this case and the case of The Council of the Law Society of Scotland-v-Kenneth Gordon [26 April 2021] where the Respondent was found not guilty of professional misconduct in a conflict of interest case.

Mr Duncan invited the Tribunal to hold that, in all of the circumstances, this was not a serious departure from Rule B1.7.2. Whilst the rule was clearly broken, the fact that it delivered no impact upon the Secondary Complainer could be seen as relevant to the question of culpability. Whilst he hesitated to use the word “oversight”, he submitted that this matter was one of omission rather than a conscious breach of the rule.

DECISION

The parties had entered into an extensive Joint Minute. The Fiscal invited the Tribunal to make findings in fact in terms of the Joint Minute and these are as noted above.

The only matter in dispute before the Tribunal was whether the conduct as described in these findings amounted to professional misconduct. The test for professional misconduct is set out in the case of Sharp v Council of the Law Society of Scotland 1984 SLT 313 which states that:-

“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made.”

The Respondent included a condition in an offer to settle his clients’ litigation that required the Secondary Complainer to withdraw any complaint he had made to the Scottish Legal Complaints Commission in relation to the role of the firm and the Respondent’s assistant. It was agreed by the Complainers that the

Respondent “overlooked” the potential conflict; believed he was following his clients’ instructions; and was acting in haste given the proximity of the next court date. The Tribunal noted that the clients’ instructions to offer to settle were in robust terms, asking that the settlement terms should be “bullet proof”. By June 2022, at the time of the second attempt to settle the litigation, the Respondent had recognised the potential conflict of interest and he drew this to his clients’ attention. The condition was removed from the eventual offer to settle. Whilst the parties agreed that the Respondent’s conduct in fact had no impact upon the interests of the clients, the Tribunal noted the potential for that to occur.

Parties referred the Tribunal to three cases: Thorley, Miller and Gordon. It took the view that all three of these cases were substantially different in degree of seriousness and culpability to the present case. Each of those cases involved a course of conduct.

The Tribunal is required to consider the whole circumstances of the case to assess the degree of culpability. It had no doubt that the Respondent acted contrary to Rule B1.7.2. Nor did it have any doubt that this was conduct that fell below the standard to be expected of a competent and reputable solicitor. It was, however, not satisfied that the conduct agreed in this case met the standard required to establish professional misconduct. The Tribunal found the Respondent not guilty of professional misconduct and concluded it was appropriate to remit the matter to the Council of the Law Society of Scotland in terms of Section 53ZA of the 1980 Act.

The Tribunal considered it important to emphasise that the Tribunal considers cases of a conflict of interest, particularly where one of the interests is that of the solicitor or firm, to be serious matters and that the Tribunal arrived at the decision it did in this case because of the particular circumstances of this case.

EXPENSES AND PUBLICITY

The Tribunal invited the parties to make submissions in relation to expenses and publicity.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal invited the Tribunal to exercise its discretion regarding expenses in favour of the Complainers. He conceded that the usual rule was that expenses follow success, but he drew the Tribunal’s attention to the distinction between civil litigation and disciplinary proceedings. He referred the Tribunal to the

case of Baxendale-Walker-v-The Law Society [2006] EWHC 643(Admin) and emphasised that the present case had been relatively straightforward.

With regards to publicity, the Fiscal stated that he could see no reason for the Tribunal to depart from its usual order.

SUBMISSIONS FOR THE RESPONDENT

Mr Duncan submitted that it was open to the Tribunal to make an award of expenses in favour of the Respondent if it thought that was appropriate. He emphasised that the Respondent had accepted that his conduct amounted to unsatisfactory professional conduct from an early stage. He stated that, whilst it was correct on one view that this was a straightforward case, the Respondent had incurred expenses in defending the matter. He recognised that there were broader considerations for the Tribunal in considering the issue of expenses but invited the Tribunal to make an award in favour of the Respondent.

He had no submission in relation to publicity.

DECISION ON EXPENSES AND PUBLICITY

Paragraph 19 of Schedule 4 to the 1980 Act gives the Tribunal the discretion to award such order of expenses “as it thinks fit”. In exercising its discretion, the Tribunal must have regard to issues of fairness and justice to all parties. Given that the Respondent accepted his conduct amounted to unsatisfactory professional conduct from the outset, it could be said that he had been successful in his defence. However, the Tribunal had determined to refer the matter back to the Council of the Law Society of Scotland. The Respondent accepted that he had breached the Practice Rules and it was this breach that resulted in the matter being brought before the Tribunal. The Tribunal recognised that issues of conflict of interest are serious and that the Law Society, when acting as the regulator of the profession, requires to have regard to the protection of the public. Considering all of the information before it, the Tribunal concluded that the fair and just order was to award expenses to the Respondent but to restrict these by 50%. The Tribunal had not specifically been invited to certify the case as suitable for the instruction of Counsel but did give this consideration. It appeared to the Tribunal that the issues in this case were narrow and straightforward. There were no complex issues of fact or law. Whilst it is always open to a Respondent to choose how to present his defence, in the circumstances of this case, the Tribunal concluded it was not appropriate to grant certification for the instruction of Counsel.

With regard to the issue of publicity, the Tribunal considered that there was the potential of prejudice to the interests of the individuals and companies mentioned in the averments of fact and submissions before it and accordingly directed that publicity should include the name of the Respondent but need not include the name of any other person.



Vincent McGovern
Acting Vice Chair