

**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

**ANDREW LIVINGSTONE LAWRIE, c/o
Lawrie Jackson, 13 Granville Street, Glasgow**

1. A Complaint dated 21 May 2018 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Andrew Livingstone Lawrie, c/o Lawrie Jackson, 13 Granville Street, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was no Secondary Complainer.
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 10 September 2018 and notice thereof was duly served upon the Respondent.
5. At the hearing on 10 September 2018, the Complainers were represented by their Fiscal, Paul Reid, Solicitor Advocate, Glasgow. The Respondent was present and represented himself.
6. Of consent and on the Fiscal's motion, the Tribunal amended the Complaint by deleting the word "*solicitor*" and substituting the word "*client*" in the last line of paragraph 3.2 and

by deleting paragraph 4.1(e). Also, of consent and on the Fiscal's motion, the Tribunal amended the Complaint by deleting the last sentence of Article 3.5 and substituting "*The Respondent, aware of this request, returned documentation to the client which belonged to the client but did not pass to her the remaining aspects of the file nor offer her an explanation as to why he would not do so.*"

7. A Joint Minute of Admissions was lodged. By means of said Joint Minute, the parties agreed that the Respondent admitted the averments of fact, duties and misconduct contained within the Complaint. The Tribunal heard submissions from both parties.
8. Having given careful consideration to the terms of the Complaint as amended, the Joint Minute of Admissions, the Productions for the Complainers and the parties' submissions, the Tribunal found the following facts established

8.1 The Respondent is Andrew Livingstone Lawrie, c/o Lawrie Jackson, 13 Granville Street, Glasgow. He was born 14 March 1957. He was admitted and enrolled as a Solicitor practising in Scotland on 19 February 1981. He was a Partner with the firm Livingstone Brown, Solicitors from 1 November 1983 to 14 December 1990. From 15 December 1990 to date he has been a Partner at the firm Lawrie Jackson, Solicitors, 13 Granville Street, Glasgow.

8.2 On or about 23 May 2014 the Respondent was instructed by a client MI to pursue from the husband of the client a sum of money due to her. On 24 June 2014 a file maintained by an alternative firm of solicitors was delivered to the Respondent. On 28 July 2014 the Respondent met with his client. On 18 August 2014 a solicitor acting on behalf of the husband wrote to the Respondent referring to an e-mail which had been sent by them on 8 May 2014 and enquiring from the Respondent whether he had his client's instructions regarding these proposals. No reply was received. The solicitor for the husband wrote again on 13 October 2014 and 20 November 2014. The Respondent did not reply. On 11, 21 and 31 October 2014 the client e-mailed the Respondent seeking an update and a reply as to what progress was made. The Respondent did not reply. On 5 January 2015 the client wrote again to the solicitor seeking an update and a reply regarding progress. The Respondent replied on 14 January 2015. A meeting was organised and took place on 19 January 2015. At that meeting the Respondent apologised for his previous

absence of communication and issued an undertaking that he would do so promptly and effectively in the future. On 15 January 2015 the Respondent telephoned the solicitor acting on behalf of the husband to discuss matters. On 6 March 2015 the solicitor acting for the husband wrote to the Respondent seeking a response following their telephone conversation of 15 January 2015. The Respondent did not reply. On 6 and 27 March 2015 the client e-mailed the Respondent seeking an update and a report as to progress. The Respondent did not reply. On 1 April 2015 the client e-mailed the solicitor once more and he replied that day. The Respondent met with the client on 7 and 20 April 2015 and 5 May 2015.

8.3 On 9 April 2015 the Respondent telephoned the solicitor acting on behalf of the husband. On 30 April 2015 the Respondent wrote to the solicitor acting for the husband. On 5 May 2015 the solicitor for the husband wrote to the Respondent articulating the position of his client and requesting a response. The Respondent failed to reply. The solicitor for the husband wrote to the Respondent on 16 June, 27 July, 31 August, 14 September and 16 November 2015. The Respondent did not reply. The solicitor for the husband in his last communication sought permission of the Respondent to write direct to his client in order to progress matters.

8.4 On 18 August 2015 the client consulted with another solicitor. On that date she signed a Mandate authorising release of her file to that solicitor. The solicitor wrote to the Respondent on 20 August and 14 September 2015. The Respondent did not reply. Telephone enquiries were made by the solicitor to the Respondent regarding delivery of the file, on 7 October, 5 November and 13 December 2015. The Respondent did not reply. On 31 October 2015 the client wrote a letter of complaint to the Respondent. On 8 December 2015 the Respondent wrote to the new agents on behalf of his former client delivering a file he had received from a previously instructed firm. He did not forward his own file. He promised to send his file along with a synopsis but failed to do so. The file was finally produced to the Scottish Legal Complaints Commission on 27 July 2016. When the client attended at the office of the Respondent to recover her file he apologised to her and returned certain papers from the client file being principal documents which

she had delivered to him when she had first instructed him. He however retained her file until he produced it to the Scottish Legal Complaints Commission.

8.5 The Respondent failed to act in the best interests of his client. As a result of inaction on the part of the Respondent in particular his failure to act upon his client's instructions, the claim on behalf of the client was delayed unreasonably. The Respondent failed or delayed unreasonably to reply to repeated communication which he received from his client seeking information regarding progress of the claim. In particular when the Respondent had acknowledged there was a difficulty and had provided an undertaking to his client at a meeting on 19 January 2015 that he would reply promptly. The Respondent was instructed on 23 May 2014. He failed to properly and effectively communicate with his client. He failed to properly and effectively communicate with a solicitor acting on behalf of his opponent. Months elapsed before the Respondent would extend the courtesy of a reply to enquiries made of him. As a consequence, the process was delayed and the Respondent failed to act in the best interests of his client. The Respondent failed to communicate effectively with his client and others. The Respondent failed to advise his client of any significant development in relation to the matter in which he was instructed. The Respondent received a Mandate from another firm of solicitors requesting delivery of the file of papers pertaining to the client's affairs. The Respondent delayed unreasonably in implementing the terms of that Mandate despite having received a number of reminders from the instructed firm. The client had sought return of her file of papers. The Respondent, aware of this request, returned documentation to the client which belonged to the client but did not pass to her the remaining aspects of the file nor offer her an explanation as to why he would not do so.

9. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect that he breached Rules B1.4.1, B1.4.3, B1.9.1 and B1.9.2 of the 2011 Practice Rules.
10. Having heard further submissions from the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 10 September 2018. The Tribunal having considered the amended Complaint dated 21 May 2018 at the instance of the Council of the Law Society of Scotland against Andrew Livingstone Lawrie, c/o Lawrie Jackson, 13 Granville Street, Glasgow; Find the Respondent guilty of professional misconduct in respect of his breaches of Rules B1.4.1, B1.4.3, B1.9.1 and B1.9.2 of the 2011 Practice Rules; Censure the Respondent; Fine him in the sum of £1,000 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)

**Eric Lumsden
Vice Chairman**

11. 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 **3 OCTOBER 2018**.

IN THE NAME OF THE TRIBUNAL



Eric Lumsden
Vice Chairman

NOTE

At the hearing on 10 September 2018 the Tribunal had before it a Complaint, a Joint Minute of Admissions, an inventory of productions for the Complainers and the Respondent's written submissions. Said Joint Minute agreed that the facts and averments in the Complaint as amended were admitted. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the Respondent was 61 years old and had been in the profession for 37 years. The Respondent was first instructed by his client in May 2014. Her file was delivered by her previous solicitors on 24 June 2014 and he met with the client on 28 July 2014. The solicitors acting for his client's husband wrote to him on several occasions throughout the latter part of 2014 and into 2015. The Respondent did not respond. His client tried to contact him in January 2015 and the Respondent provided a "reply of sorts" and met with her on 19 January 2015. He apologised to his client for his lack of action. Throughout 2015 his client and the solicitors on the other side contacted the Respondent by letter and email many times. This correspondence was largely ignored. Eventually, in November 2015, the solicitors sought permission to contact the Respondent's client direct. The client went on to get a new solicitor. The new firm of solicitors sent a mandate to the Respondent for the file. He did not reply. There was not response to their reminder letter or their telephone calls in October, November and December. The client threatened to complain. The Respondent eventually delivered the file from his client's previous solicitors. However, he failed to deliver his own file until 2016.

The Fiscal invited the Tribunal to find professional misconduct established. For a period of nineteen months from May 2014 to December 2015 little if anything was done by the Respondent in respect of his client's instructions. There were very lengthy delays between any action. He repeatedly failed to communicate with his client and fellow solicitors. He failed to honour the undertaking he gave to the client and consequently her interests were compromised.

SUBMISSIONS FOR THE RESPONDENT

The Respondent indicated that his client's case had been complex, involving pension issues. The matters were contentious. It was difficult to ascertain the problem and he spent a lot of time with the client. His client was very pleasant and did not create difficulties. Normally he would have been able to deal with her case but at this time he was not coping with complex cases. He admitted that he did not progress

her case. He had experienced a difficult time professionally and had health difficulties at this time which had created a “perfect storm”. However, he said he understood these issues were only mitigatory. The Respondent noted that if he had generally acted in this way he would have been before the Tribunal before now. He said he has always tried to observe the rules of the profession, work hard and be honest. He said it was a “poor reward” for 40 years of service that he had managed to get himself into this situation. While admitting that the charge against him was justified, the Respondent noted that given his record, he had hoped that this matter could have been dealt with without an appearance before the Tribunal. However, this had not proved possible. He noted that the whole matter had “left a profound mark” and publication of the Tribunal’s findings would be difficult for him.

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. There are certain standards of conduct to be expected of competent and reputable solicitors and 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 it is essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the Respondent.

The Respondent failed to act in the best interests of his client. As a result of his inaction, her claim was unreasonably delayed. He failed or delayed to reply to repeated communication from his client and fellow regulated persons. This Tribunal has previously held that in order to transact business, it is essential that solicitors respond promptly and fully to inquiries from other firms. It is a solicitor’s duty to reply to all correspondence relating to a client’s affairs which calls for an answer. The Respondent failed to advise his client of any significant developments. He did not do his best for the client. He delayed unreasonably in implementing a mandate despite reminders. It is the privilege of a client that he can terminate his solicitor’s agency at any time and subject to any matter of outstanding fees, it is the former solicitor’s duty in such circumstances to comply without question and as soon as practicable with any request or instruction by that client for the delivery of papers which might be regarded as belonging to that client. The new solicitor will not have the same knowledge of the client’s affairs and it is appropriate that he or she should have access to papers to assist him in advising the client. The Respondent also retained his file when it was requested by the client. He therefore breached Rules B1.4.1, B1.4.3, B1.9.1 and B1.9.2. The Respondent’s failures in this case were a serious and

reprehensible departure from the standards of a competent and reputable solicitor. Therefore, he was guilty of professional misconduct.

SUBMISSIONS IN MITIGATION

The Respondent described the health and professional difficulties he experienced at the time of the professional misconduct. Although he had the support of qualified and unqualified staff, it was difficult for him as a sole practitioner to manage his business in these circumstances. He was “spinning plates” and one hit the ground. Since then he said he had pulled things together significantly. He was now in command of his workload. He had employed another member of staff. He had addressed the issues and there were no ongoing problems.

DECISION ON SANCTION

The Tribunal considered that the professional misconduct in this case was at the lower end of the scale, although it had concerns that the Respondent passed on the previous firm’s file but retained parts of his own file at that stage. However, the misconduct was restricted to one client and appeared to be an isolated incident. The Tribunal had regard to the Respondent’s personal circumstances, the early plea of guilt, his obvious remorse, the respect he showed the Tribunal by attending in person and the corrective steps he had taken to resolve matters. The Respondent showed clear insight into his conduct. The Tribunal noted that the Respondent had paid compensation to the client and refunded her fees. He had taken steps to ensure that a similar issue did not arise again. The Tribunal did not consider that there was any risk to the public and there was therefore no requirement for supervision. The Tribunal was satisfied that a Censure and Fine of £1,000 was sufficient to mark the gravity of the offending in these circumstances.

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.



Eric Lumsden
Vice Chairman