

**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

**GRAEME BRUCE MURRAY, Solicitor,
Graeme Murray & Co., 10-12 Chapel Street,
Aberdeen**

1. A Complaint dated 29 November 2017 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Graeme Bruce Murray, Solicitor, Graeme Murray & Co., 10-12 Chapel Street, Aberdeen (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were two Secondary Complainers, Jonathan Mitchell, Q.C. and Isobel Wylie, Advocate, both care of the Faculty of Advocates, Advocates Library, Parliament House, Edinburgh.
3. The Tribunal caused a copy of the Complaint as lodged to be served on the Respondent. No Answers were lodged for the Respondent.
4. In terms of its Rules the Tribunal appointed the Complaint to be heard on 23 February 2018 and notice thereof was duly served on the Respondent.
5. The case called on 23 February 2018. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present but not represented. The Respondent moved the Tribunal to adjourn the hearing to allow him to lodge a psychiatric

report and for Mr David Burnside to represent him. The Law Society opposed the motion. The Tribunal granted the motion to adjourn and fixed a hearing for 9 May 2018.

6. The matter was subsequently administratively adjourned to 31 May 2018 by the Chairman utilising the powers of the Tribunal under Rule 56 of the Scottish Solicitors' Discipline Tribunal Procedure Rules 2008 ("the rules").
7. The hearing took place on 31 May 2018. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented by David Burnside, Solicitor, Aberdeen. Both parties confirmed that they were content that the Chairman hear the case in the knowledge that he had also chaired a recent hearing against the Respondent's wife. A Joint Minute of Admissions was lodged. This agreed all averments of fact, duty and misconduct in the Complaint.
8. The Tribunal found the following facts established

8.1 The Respondent was enrolled as a solicitor on 15 February 1982. He became a Partner with Graeme Murray & Co, 10-12 Chapel Street, Aberdeen, AB10 1SP on 4 January 1993 and from 1 January 2014 to 7 December 2016 was the sole partner of the firm.

He was sequestrated on 7 December 2016. On 2 February 2017 the Complainers' Practising Certificate Committee granted him a restricted Practising Certificate.

8.2 The firm of Graeme Murray & Co. (hereinafter referred to as "the Respondent's firm") instructed Counsel to carry out work in a number of family court actions.

8.3 N v N

This was a Court of Session Action in which the Respondent's firm were instructed on behalf of the Pursuer. Drummond Miller LLP were acting as Edinburgh Agents for the Respondent's firm. In or around July 2010 the Respondent's firm instructed Kirsty Malcolm, Advocate c/o Westwater Advocates, Advocates Library, Parliament House, Edinburgh.

Fee notes for Counsel's fees were issued by Faculty Services Limited to the Respondent's Firm per Drummond Miller LLP as follows:

- (1) Fee note dated 14 July 2010 - £235;
- (2) Fee note dated 21 August 2010 - £352.50; and
- (3) Fee note dated 21 September 2010 - £352.50.

The fee notes were marked "ON COMPLETION". The fee notes accordingly fell due by the Respondent at the conclusion of the court action. Decree in the court action was granted on 11 October 2013 and accordingly Counsel's fees became due on that date.

The Respondent failed to make payment of the respective fee notes. Faculty Services Limited wrote to the Respondent on 11 April 2013 and 30 August 2013 requesting an update on the current position of the case. No response was received.

A further letter was sent on 23 October 2013 referring to the lack of response by the Respondent and advised absent a response the fees would fall to be due for payment within 14 days from the date of the letter. No response was received.

Faculty Services Limited emailed the Respondent on 17 December 2013 requesting an update on payment of outstanding Counsel's fees. The case was closed on 9 March 2014 thereby allowing Faculty Services Limited to attempt to recover fees. An overdue notice was sent by Faculty Services Limited addressed to the Respondent's firm on 3 July 2014. No response was received.

Further emails were sent by Faculty Services Limited to the Respondent on 23 July 2014 and 19 August 2014 seeking payment of the outstanding fees.

Despite repeated requests for payment the Respondent failed to respond to correspondence from Faculty Services Limited and failed to make payment of the outstanding fees. The total fee of £940 remains outstanding.

8.4 E v E

In or around July 2013 the Respondent's firm instructed Catherine Dowdalls QC, Advocate c/o Arnot Manderson Advocates, Advocates Library, Parliament House, Edinburgh, EH1 1RF to provide an opinion on behalf of their client.

On 19 July 2013 a fee note totalling £900 was issued by Faculty Services Limited to the Respondent's firm for Counsel's fee. No payment was received.

Faculty Services Limited thereafter issued an overdue notice on 6 November 2013 advising the fee note was now two months overdue. No response was received. A further letter dated 3 December 2013 was sent to the Respondent's firm advising the fee was now critical and requested settlement of the fee note as a matter of urgency. No payment or response was received.

On 17 December 2013 Faculty Services Limited called the Respondent's Office. It was arranged the Respondent would call them back. With no response, a letter was sent to the Respondent on 9 January 2014 by the Dean.

Faculty Services Limited made telephone calls to the Respondent but had to leave messages asking that he called them back in relation to the settlement of Counsels' fees, said calls being on 28 January, 11 February and 5 March 2014.

After the imposition of sanctions on 7 March 2014 there was a further call to the Respondent on 24 April 2014 which he did not return and he was then emailed on 7 May 2014.

On the same day, 7 May, the Respondent emailed back apologising for the delay and advising he would deal with the matter urgently. He was advised by email on 8 May 2014 that he had one month to deal with the outstanding fees.

With no further response Faculty Services Limited emailed the respondent on 10 June 2014. On 16 June the Respondent emailed back apologising for the delay advising he had been off ill and he would now deal with the matter urgently.

An email was sent to the Respondent on 23 July 2014 requesting an update. In the absence of any response a further email was sent on 19 August 2014 advising that if Faculty Services Limited did not hear from the Respondent within fourteen days they would proceed with a Complaint. On 9 September 2014 in the absence of any reply the matter was referred to the Dean's Office who ultimately complained to the SLCC.

Despite repeated requests for payment the Respondent failed to respond to correspondence from Faculty Services Limited and failed to make payment of the outstanding fee. The total fee of £900 remains outstanding.

8.5 B v B

The Respondent's firm instructed both Senior and Junior Counsel to act on behalf of their client in defending a court action. Drummond Miller LLP were instructed as Edinburgh agents for the Respondent's firm.

Jonathan Mitchell QC, Advocate c/o Arnot Manderson Advocates, Advocates Library, Parliament House, Edinburgh, EH1 1RF was instructed as Senior Counsel and Kirsty Malcolm, Advocate c/o Westwater Advocates, Advocates Library, Parliament House, Edinburgh, EH1 1RF as Junior Counsel.

Fee notes for Counsels' fees were issued by Faculty Services Limited to the Respondent's firm per Drummond Miller LLP as follows:

- (1) Fee note for Jonathan Mitchell QC dated 24 August 2013 - £1,800;
- (2) Fee note for Jonathan Mitchell QC dated 30 August 2013 - £2,400; and
- (3) Fee note for Kirsty Malcolm dated 2 September 2013 - £1,800.

No payment of Counsels' fees was received. Overdue notices were issued by Faculty Services Limited to the Respondent's firm on 5 December 2013 and 8 January 2014. No response was received.

Thereafter letters from the Dean of Faculty were sent to the Respondent on 10 January and 5 February 2014.

Thereafter calls were made to the Respondent on 18 March, 26 March and 7 April 2014. Messages were left asking that the Respondent return the calls. They were not returned.

On 7 May 2014 Faculty Services Limited emailed the Respondent advising they proposed to make a complaint to the Law Society. On the same day the Respondent emailed back apologising, advising he had been off sick but would attend to the matter as one of urgency. His email was acknowledged on 8 May and he was advised that one month would be allowed for him to deal with the outstanding fees.

On 10 June 2014 the Respondent was emailed advising that the fees remained outstanding. On 11 June 2014 the Respondent emailed in reply apologising for the delay advising he had been off sick and would now attend to the matters urgently.

On 23 July 2014 the Respondent was emailed requesting an update. In the absence of any response he was emailed on 19 August 2014 advising he had fourteen days to resolve the matter or the Faculty would proceed with a complaint.

Despite repeated requests for payment the Respondent failed to respond to correspondence from Faculty Services Limited and failed to make payment of the outstanding fees. Counsels' fees totalling £6,000 remains outstanding.

8.6 D v D

The Respondent's firm instructed Isobel Wylie, Advocate, c/o Faculty Services Limited, Advocates Library, Parliament House, Edinburgh, EH1 1RF to act on behalf of their client.

On 30 September 2013 a fee note totalling £8,160 for Counsel's fee was issued by Faculty Services Limited to the Respondent's firm.

No payment of Counsel's fee was made. Faculty Services Limited sent the Respondent's firm an overdue notice on 8 January 2014. No response was received.

On 5 February 2014 Faculty Services issued a letter from the Dean. There was no response and on 5 March 2014 a telephone call was made to the Respondent and a message left advising that unless the matter was addressed by the following Friday sanctions would be imposed. There was no response.

On 7 March 2014 a sanctions letter was issued. On 24 April 2014 Faculty Services Limited called the Respondent asking that he contact them as a matter of urgency. The call was not returned. On 7 May 2014 an email was sent to the Respondent advising a complaint to the SLCC was being considered. On the same day the Respondent emailed back advising he would now deal with outstanding fees urgently. An email was sent to the Respondent acknowledging his email and confirming Faculty Services Limited would hold off for one month to allow him to settle outstanding fees.

On 10 June 2014 the Respondent was emailed with a request for an update on settlement of Counsels' fees. The Respondent emailed back on 16 June 2014 apologising advising he had been off sick but would now deal with the matter urgently.

On 23 July 2014 Faculty Services Limited emailed the Respondent requesting an update and enclosing a copy of outstanding fees.

In the absence of any response, Faculty Services Limited emailed the Respondent on 19 August 2014 advising if they hadn't heard from him in respect of settlement within fourteen days they would have no option other than to proceed with a complaint.

Despite repeated requests for payment the Respondent failed to respond to correspondence from Faculty Services Limited and failed to make payment of the outstanding fee. Counsel's fee totalling £8,160 remains outstanding.

- 8.7 As a consequence of the Respondent's repeated failure to respond and his failure to make payment of the outstanding fees, the Dean of Faculty on behalf of the four Advocates referred to above made a complaint.

The complaint was duly investigated by the Complainers and the matter was considered by the Complainers' Professional Conduct Sub Committee on 10 November 2016.

8.8 The Professional Conduct Sub Committee determined that the Respondent's conduct in respect of:-

1. His failure to comply with the professional obligation owed by a Solicitor who instructs Counsel so far as reasonably practicable to ensure payment of Counsel's fees in the case of N v N.
2. His failure to respond to correspondence on behalf of Counsel for requests for payment to be made in the case of N v N.
3. His failure to comply with the professional obligation owed by a Solicitor who instructs Counsel so far as reasonably practicable to ensure payment of Counsel's fees in the case of E v E.
4. His failure to respond to correspondence on behalf of Counsel for requests for payment to be made in the case of E v E.
5. His failure to comply with the professional obligation owed by a Solicitor who instructs Counsel so far as reasonably practicable to ensure payment of Counsel's fees in the case of B v B.
6. His failure to respond to correspondence on behalf of Counsel for requests for payment to be made in the case of B v B.
7. His failure to comply with the professional obligation owed by a Solicitor who instructs Counsel so far as reasonably practicable to ensure payment of Counsel's fees in the case of D v D and,
8. His failure to respond to correspondence on behalf of Counsel for requests for payment to be made in the case of D v D

appeared to amount to a serious and reprehensible departure from the standard of conduct to be expected of a competent and reputable Solicitor and that it appeared to be capable of being proved beyond reasonable doubt and could therefore amount to professional misconduct.

The Sub Committee determined that a Fiscal should be appointed in terms of the Solicitors (Scotland) Act 1980 Section 51.

9. Having considered the Complaint, Productions, Joint Minute and the Fiscal's submissions, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:
- (a) He failed to communicate with Faculty Services Limited on behalf of Counsel and failed to respond to correspondence from Faculty Services Limited; and
 - (b) He failed to make payment of the fee notes due to Counsel.
10. The Tribunal heard submissions from Mr Burnside in mitigation and with regard to disposal. Having given careful consideration to those submissions, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 31 May 2018. The Tribunal having considered the Complaint dated 29 November 2017 at the instance of the Council of the Law Society of Scotland against Graeme Bruce Murray, Solicitor, Graeme Murray & Co., 10-12 Chapel Street, Aberdeen; Find the Respondent guilty of professional misconduct in respect that (a) he failed to communicate with Faculty Services Limited on behalf of Counsel and failed to respond to correspondence from Faculty Services Limited; and (b) he failed to make payment of the fee notes due to Counsel; Censure the Respondent; Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for an aggregate period of two years any practising certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as may be approved by the Council or the Practising Certificate Sub Committee of the Council of the Law Society of 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; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent and the Secondary Complainers but need not identify any other person and that publicity should be deferred pending the outcome of associated proceedings or confirmation that there will be none; and Allow the Secondary Complainers to lodge or amend any claim for compensation within 28 days from intimation of these findings.

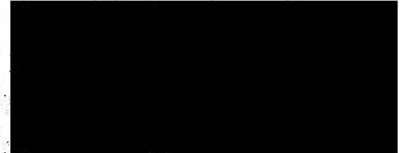


(signed)

Nicholas Whyte
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 5 July 2018.

IN THE NAME OF THE TRIBUNAL



Nicholas Whyte

Chairman

NOTE

At the hearing on 31 May 2018, the Tribunal had before it a Complaint, an Inventory of Productions for the Complainers and a Joint Minute agreeing all the averments of fact, duty and misconduct.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal referred the Tribunal to the Joint Minute which agreed the whole Complainers' case. He noted that the Respondent admitted professional misconduct but conceded that this was a matter for the Tribunal. The Fiscal submitted that the Sharp test was met. The Respondent had failed to pay Faculty fee notes in four separate cases. In doing so, he was guilty of professional misconduct by failing to communicate and respond to correspondence from Faculty Services Limited on behalf of Counsel and failing to pay the fees. The Fiscal referred the Tribunal to Production 6 for the Complainers which was a detailed timetable produced by Faculty Services Limited setting out the history of the approaches made to the Respondent and the lack of response from him. The Fiscal highlighted the same pattern of behaviour in the four cases. He said that the entries stretched from Summer 2013 to the end of 2014 and there was therefore a period of 15 to 18 months where Faculty Services were phoning and writing to the Respondent and obtaining little or no response. The Fiscal submitted that this was in clear breach of the Rules on effective communication and relationships between regulated persons. The Fiscal noted that it was a well-established principle that solicitors have an obligation to pay fees due to Counsel.

DECISION

The Tribunal considered carefully the admitted facts contained in the Complaint and Joint Minute. The Tribunal was satisfied beyond reasonable doubt that the Respondent had behaved in the manner as set out in the Complaint. It is long established that upon a solicitor instructing Counsel, the solicitor accepts personal responsibility for that Counsel's fee. On four occasions the Respondent neglected his professional duty in this regard. He had also failed to communicate effectively with Faculty Services Limited. The debts arose several years before sequestration.

Having considered the whole circumstances and the Respondent's degree of culpability, the Tribunal was of the view that the Respondent's conduct was a serious and reprehensible departure from the standards of conduct to be expected of competent and reputable solicitors. This was sufficient to satisfy the test for professional misconduct as defined in Sharp-v-The Council of the Law Society of Scotland 1984 SLT 413.

SUBMISSIONS IN MITIGATION

Mr Burnside indicated that the Respondent and his wife had a small successful practice in Aberdeen for many years but fell into financial difficulty following the recession. They moved to bigger premises just as the banks started to restrict lending leading to a fall in business. They used their own money to keep the firm going. The Respondent's wife was the cashroom partner for the firm. She was suspended by the Law Society in 2013 for matters relating to her management of the cashroom. The suspension created a difficult situation for the Respondent. His wife could not practise so he was obliged to take on her work. The other two partners of the firm took over the cashroom function but after two months they said that they could not cope as they had no experience of these matters. They handed the cashroom back to the Respondent. This was a considerable burden on him as he was a very busy criminal practitioner working at court every day. Matters got out of hand. His cashier resigned. She retained information on her home computer which she refused to return to the Respondent. The Respondent did not have the HMRC codes he required. HMRC began pressing for payment and imposing penalties and interest. This is what led to his eventual sequestration. The firm's turnover halved after the Respondent's wife was suspended but their overheads remained the same. His wife was at home and was unable to support or help him.

The Respondent also went through a difficult period in his personal life and Mr Burnside referred to a report from a consultant psychiatrist from Glasgow which set out the stressors on the Respondent. He had significant caring responsibilities and he and his wife suffered bereavements during this time. The Respondent had to sell his home. Investment properties which he had intended would provide an income during his retirement have been sold.

Mr Burnside accepted that a solicitor instructing a professional person has a responsibility to settle their fees. It would have been prudent to get the money up front from the clients. The Respondent recognises that this is what should have been done. Mr Burnside emphasised that the four clients refused to put him in funds for Counsels' fees. It was not the case that he had taken their money and used it for another purpose. Mr Burnside noted that the Joint Minute agreed that the Respondent did not instruct Counsel on these occasions but when he became the last partner, the buck effectively stopped with him. The Respondent has told Mr Burnside that he had two frank conversations with the Dean of the Faculty and although the Dean was sympathetic, his members needed to be paid.

The Respondent is 61. He is employed on a modest salary earning significantly less than he was making as a partner in his own firm. Mr Burnside referred to a letter from Mr Hingston dated 30 May 2018. He noted that Mr Hingston has set out very strict perimeters within which the Respondent must work. He is invaluable to his employer but is not involved in the cashroom. Mr Burnside urged the Tribunal to find a way of dealing with the Respondent which would allow him to continue to practise. He confirmed that the Respondent and his present employer were happy for the Respondent to work under a restriction and be supervised by Mr Hingston.

DECISION ON SANCTION

It is a long-established principle that a solicitor has a professional responsibility in regard to the settlement of Counsel's fees in relation to work in which he has instructed. Although the Respondent was ultimately responsible for those fees, the Tribunal noted that he did not receive payment from clients. He also was not the person who instructed Counsel. These matters were relevant to mitigation.

The Tribunal was of the view that the Respondent should be allowed to continue to practise. However, protection of the public was also an important consideration. The Tribunal considered that it would not be proportionate to strike off or suspend the Respondent. Instead, the Respondent should be Censured. Given his current financial situation a fine would not be appropriate. Censure alone would not protect the public as it would allow the Respondent to set up his own firm. The risk to the public was high given the history described by Mr Burnside. It was therefore appropriate that the Tribunal order a restriction on the Respondent's practising certificate which would allow him to work only as a qualified assistant employed by someone approved by the Law Society. The appropriate period of restriction was two years.

Following submissions on publicity and expenses, the Tribunal ordered that the findings should be given publicity and that the Respondent and the Secondary Complainers should be named but that no other person need be identified as publication of their personal data may be detrimental to their interests. The Respondent was found liable in expenses. Publicity will be deferred until related proceedings are concluded or confirmation that there are to be none.

Mr Burnside indicated that the Secondary Complainers have submitted a claim to the Trustee in Sequestration but that the sequestration dividend has not yet been paid. He highlighted that usually, sequestration will extinguish a debt. The Tribunal noted that it will be for the Secondary Complainers to satisfy the Tribunal that compensation is appropriate in this case at any future compensation hearing

which is fixed. The Secondary Complainers are to be allowed 28 days from the date of intimation of the Findings to amend their claim for compensation or to lodge fresh claims for compensation.



Nicholas Whyte
Chairman