

**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**

**DEREK WOOD, 14 McCallum Grove, East  
Kilbride, Glasgow**

**Respondent**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that, Derek Wood, 14 McCallum Grove, East Kilbride, Glasgow (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, [REDACTED] (hereinafter referred to as "MS").
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. The Respondent submitted a letter indicating that he would not be resisting the Complaint.
4. In terms of its Rules, the Tribunal appointed the Complaint to call for a hearing on 6 November 2017 and notice thereof was duly served on the Respondent. For administrative reasons, this hearing could not proceed on that date and the Tribunal determined to fix a new hearing for 18 December 2017. Notice of this new date was duly served upon the Respondent.
5. At the hearing on 18 December 2017, the Complainers were represented by their Fiscal, Grant Knight, Solicitor, Edinburgh. The Respondent was neither present nor represented.

6. A Joint Minute between the parties had been lodged with the Tribunal agreeing all of the averments of fact, duty and professional misconduct. The Fiscal made a motion in terms of Rule 14 of the 2008 Tribunal Rules for the Tribunal to proceed to hear and determine the Complaint in the absence of the Respondent. Having regard to correspondence received from and on behalf of the Respondent, the Tribunal granted this motion and proceeded to hear submissions from the Fiscal.

7. The Tribunal found the following facts established:-

7.1 The Respondent is a Solicitor enrolled on the roll of solicitors in Scotland. His date of birth is 26 September 1957 and he was enrolled as a solicitor on 18 November 1980. He was formerly a partner of Rafferty Wood & Co., Solicitors, 33 Castlemilk Arcade, Castlemilk, Glasgow, G45 9AA. He resigned as a partner of that firm on 9 January 2015. His practising certificate expired on 31 October 2015 and he no longer appears on the Roll of Solicitors maintained by the Complainers and that from 28 July 2016. He presently resides at the address in the instance.

7.2 On 11 March 2008 the Respondent was consulted by MS in respect of a potential medical negligence claim against two dental practitioners. MS was admitted to the Legal Advice and Assistance Scheme and advised that she would require to make a contribution towards that of £105. The Respondent requested that MS completed mandates to allow her medical records to be recovered. The medical records were recovered and the Respondent then took steps to instruct expert opinions in relation to the alleged medical negligence. A claim on behalf of MS was duly intimated and one of the dental practitioners against whom the allegations were levelled instructed the Medical & Dental Defence Union of Scotland ("MDDUS") to represent his interests. Following receipt of a supportive expert opinion, the Respondent wrote to MS on 2 December 2009 inviting her to make an appointment to enable an application for legal aid to be completed and submitted in order that Court proceedings could be commenced. On 26 January 2010 the MDDUS wrote to the Respondent denying liability.



7.3 During the course of 2010 and 2011 MS sought clarification from the Respondent regarding the progress of her claim. He arranged and cancelled appointments with MS. On 3 September 2012 MS wrote to the Respondent seeking a further update and in particular she referred to “...*the outcome of the Proof Hearing.*” In response the Respondent sent an email to MS on 4 September 2012 in the following terms:

*“..I am sorry for the delay here. I have been waiting to hear from Edinburgh re. your hearing. It would seem that the matter has been continued to a Procedural Hearing on 25 September to allow for dates to be identified and allocated for your Proof. I will respond to you with that information as soon as I am aware of it.”*

On 11 October 2012 the Respondent sent an email to MS in the following terms:

*“..The Court has set down three days of Proof the dates to be confirmed by the relevant Counsel. I expect to have these dates shortly.”*

MS sent further reminders to the Respondent on 18 December 2012, 20 March 2013, and 2 May 2013.

7.4 On 22 May 2013, in response to the reminders sent by MS, the Respondent emailed MS in the following terms:

*“..I have now taken the opportunity to be in touch with our Edinburgh agents to establish what progress has been made in your case. As you are aware there had been a business meeting at Court some considerable time ago, which was referred to as “the Proof Hearing”. The outcome of that meeting was a direction to try and narrow the grounds of dispute. Despite discussion between our respective Counsel this has not proved possible to date. We had held off instructing further medical opinion in the hope that any opinion might have been a useful tool in assessing damages in the course of a negotiated settlement. That has proved to be a vain hope. We have now instructed our agents to withdraw from further negotiations and arrange to fix a Proof where evidence can be led and the matter brought to a conclusion. Please of any dates in the next six to*

*nine months when you would not be available to attend Court and give evidence. We will pass on the dates and advise you of the dates of the Proof as soon as possible.”*

Following upon a further reminder from MS by email to the Respondent on 3 September 2013, the Respondent sent an email to MS on 4 September 2013 in the following terms:

*“..The Defenders have at long last advised that they have appointed their own specialist expert. We suspect that he has been in place for some time. We have requested that a timetable now be put in place to enable the matter to proceed to Proof. Our Edinburgh agents will inform us of those dates. When we have them we will be in touch.”*

A reminder was sent by MS to the Respondent on 21 November 2013 and in response to that reminder the Respondent emailed MS on 10 December 2013 in the following terms.

*“..I am waiting for dates from Edinburgh for a Legal Debate Hearing. This is to consider the legal basis for liability against the Defenders. I note that you have been waiting for this information as have I. I am putting pressure on the Court through our Edinburgh agents and will get back to you in seven days or less.”*

MS sent further reminders to the Respondent on 8 and 21 January and 5 March, all 2014. A further reminder was issued by MS to the Respondent on 25 October 2014 and in response the Respondent emailed MS on 12 November 2014 in the following terms:

*“..I have not been able to come back to you as the outcome of the Legal Debate is still awaited. Counsel is being quite guarded in his response to me at this date. Apparently the argument was hard fought and the outcome is uncertain. Hopefully the Judge will issue a Judgment on the outcome of his deliberations shortly.”*



7.5 By letter dated 9 January 2015, Rafferty Wood & Company wrote to MS advising that they could no longer act on her behalf and that she would require to seek advice from another firm of solicitors. On 1 February 2015, MS consulted a new firm of solicitors. By letter dated 28 August 2015, Rafferty Wood & Company wrote to MS in response to a formal complaint submitted by her and that in the following terms:

*“..We deeply regret the difficulty this matter has caused you. It is not clear precisely what information you were given by Mr Wood. Insofar as we can ascertain, there was never an action raised and accordingly the information that you were given regarding a “Proof Hearing” and other Court Hearings was inaccurate.”*

7.6 The Respondent had provided false and misleading information to MS regarding the progress of her claim and, in particular, the progress of any purported Court proceedings in the emails issued by him on 4 September, and 11 October 2012, 22 May, 4 September and 10 December all 2013 and 12 November 2014. Further, as a result of the Respondent’s failure to progress the claim for alleged medical negligence advanced by MS and to raise appropriate proceedings, any claim which MS may have had in that regard prescribed.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of Professional Misconduct in respect that:-

- (a) he failed to act in the best interests of his client in regard to the raising and pursuit of a claim for medical negligence in that he either failed to raise the appropriate court action or unduly delayed the progress of the claim or court proceedings over the period from March 2008 to January 2015; and
- (b) he provided his client with false, misleading, inaccurate and dishonest information about the progress of a court case on a number of occasions by informing his client of the purported progress of the court proceedings knowing that no such court proceedings had been instigated or raised on behalf of the said client.

9. Having heard further submissions for the Complainers and having given careful consideration to the content of the correspondence received from and on behalf of the Respondent, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 18 December 2017. The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Derek Wood, 14 McCallum Grove, East Kilbride, Glasgow; Find the Respondent guilty of professional misconduct in respect that he failed to act in the best interests of his client and he made false, misleading, inaccurate and dishonest statements to his client on a number of occasions; Order, in terms of Section 53(2)(aa) of the Solicitors (Scotland) Act 1980 that the restoration of the Respondent's name to the Roll of Solicitors in Scotland be prohibited; 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 Allow the Secondary Complainer 28 days from the date of intimation of these Findings to lodge a written claim for compensation with the Tribunal Office.

**(signed)**

**Colin Bell**

**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 *26 JANUARY 2018.*

**IN THE NAME OF THE TRIBUNAL**



**Colin Bell**  
**Vice Chairman**

**NOTE**

The Respondent did not attend the hearing on 18 December 2017. The Tribunal had however received a letter from the Respondent dated 2 August 2017, a copy of a letter from the Respondent to the Fiscal dated 15 November 2017 and two letters from a solicitor on behalf of the Respondent dated 16 November 2017 and 14 December 2017. Within that correspondence it was clearly indicated that the Respondent preferred not to attend the hearing personally and consented to the hearing being dealt with in his absence. Accordingly, the Fiscal for the Complainers made a motion in terms of Rule 14 of the 2008 Tribunal Rules for the Complaint to be heard and dealt with in the absence of the Respondent. The Tribunal gave careful consideration to the content of the correspondence. It appeared clear from this that the Respondent understood the terms of the Complaint against him and that he preferred for the matter to be dealt with in his absence. On that basis, there appeared to be no prejudice to the Respondent or the public interest in proceeding in his absence. Accordingly, the Tribunal granted the motion.

The Fiscal sought to lodge an Inventory of Productions late. He confirmed that the Inventory had not been intimated to the Respondent but submitted that the documents listed in the Inventory were narrated in the Complaint. The Fiscal accepted that this was a matter within the discretion of the Tribunal and confirmed that, in any case, the Productions were not essential to his submissions. The Tribunal was concerned that, although some of the correspondence was referred to in detail in the Complaint, many of the Productions were not. The Productions had not been intimated to the Respondent and so he had not been given any opportunity to comment upon them. On the basis that these Productions potentially contained information prejudicial to the Respondent, balanced with the Fiscal's position that they were not essential to the presentation of his case, the Tribunal refused to allow their late lodging.

**SUBMISSIONS FOR THE COMPLAINERS**

The Fiscal explained that the Respondent's client, MS, had consulted the Respondent on 11 March 2008 in relation to a potential medical negligence claim. The Respondent had carried out initial investigative work. On a number of occasions the client had sought clarification from the Respondent. In September 2012 in response to such a request from the client, the Respondent gave an explanation for the delay in her case which referred to court procedure. A further email was sent by the Respondent on 11 October 2012 suggesting that a proof had been allowed. Three more reminders were sent by the client before the Respondent answered in May 2013 with an email which referred again to the court proceedings and discussions with Counsel. A further reminder from the client received a response suggesting that "the defenders" had been in touch. A further reminder from the client was responded to by reference to dates



being fixed for a legal debate. The client sent further reminders to the Respondent throughout the following year and the Respondent eventually answered in November describing that a legal debate had taken place and that he was awaiting the judgement. Finally, in January 2015, the client received a letter from the Respondent's firm indicating that the firm could no longer act on her behalf. She instructed new solicitors and it was through them that the client received confirmation that all of the information previously given by the Respondent was inaccurate.

From September 2012 until November 2014, the Respondent had provided his client with false and misleading information. As a result of the Respondent's conduct, his client had been unable to progress her claim and in fact had lost the claim, it now being time barred. The Fiscal understood that MS had gone to instruct another firm of solicitors to see if she could progress a claim against the Respondent's firm in relation to its professional indemnity insurance.

The Fiscal highlighted that the Respondent had deceived and lied to his client for a period in excess of two years during which time he had had numerous opportunities to tell the truth. He emphasised that the Tribunal has said on many previous occasions that it is important that a solicitor must be trustworthy, honest and not open himself to any accusation of lack of integrity. He invited the Tribunal to convict the Respondent of professional misconduct.

The Fiscal conceded that the Respondent was entitled to credit for his early admission of guilt and confirmed that the Respondent had no previous record of professional misconduct. With regard to the correspondence from the Respondent, the Fiscal submitted that although the Tribunal had some documentation to indicate that the Respondent had health problems during the time of the averred actings, this was not put forward as an excuse but only background circumstances.

## **DECISION**

The Respondent had admitted failing to act in the best interests of his client by failing to progress her claim for a significant period of time and to repeatedly lying to the client over a period of in excess of two years. This conduct required to be weighed by the Tribunal against the standard for misconduct set out in the case of Sharp. The Tribunal took the view that the conduct here fell well below the standard to be expected of a competent solicitor and was extremely serious and reprehensible. The Respondent on no less than six occasions had blatantly lied to his client and fabricated information presumably in order to hide his inaction. The Respondent admitted, and the conduct plainly was, dishonesty on the part of the Respondent.

The Tribunal had little hesitation in unanimously finding the Respondent guilty of professional misconduct.

Before reaching this decision, the Tribunal had given very careful consideration to the contents of the GP's report and the community psychiatric nurse's assessment that had been produced on behalf of the Respondent. These made reference to the Respondent having suffered from anxiety and depression from about 2004. The Tribunal concluded that the circumstances described therein could at best amount to mitigation and were not relevant to the question of whether or not the Respondent's conduct amounted to professional misconduct.

The Tribunal invited the Fiscal to make further submissions. The Fiscal drew the Tribunal's attention to the fact that the Respondent's name was no longer on the Roll of Solicitors in Scotland. He invited the Tribunal to consider, if it had had in mind that this would have been a case where it would have considered striking off the Respondent, to consider making an order in terms of Section 53(2)(aa) of the Solicitors (Scotland) Act 1980. He referred the Tribunal to the record card for the Respondent.

The Fiscal invited the Tribunal to make an award of expenses in favour of the Complainers and made no submissions with regard to publicity. With regard to the Secondary Complainer, the Fiscal confirmed that he had intimated today's hearing to the Secondary Complainer and believed that the Secondary Complainer intended to submit a claim for compensation. He believed that the Secondary Complainer was awaiting the outcome of today's hearing before taking any further steps.

## **SANCTION**

The Respondent here had admitted very serious misconduct. Without doubt such dishonest conduct was bound to be damaging to the reputation of the profession. It certainly raised significant issues with regard to protection of the public. These were blatant lies told to a client on a number of separate occasions and over a significant period of time.

The Tribunal recognised that the Respondent had cooperated and admitted his guilt from the very outset. He had been in practice for some 35 years without any previous disciplinary issues being raised. It seemed from the papers before the Tribunal that the Respondent had paid an award of compensation through the Scottish Legal Complaints Commission and had provided funds to his former firm which



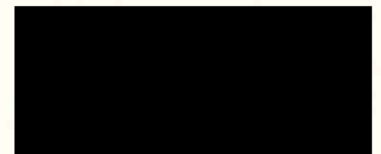
were said to include funds to cover the excess for a claim under the professional indemnity insurance in relation to this client's medical negligence claim.

The information before the Tribunal with regard to the medical background was not particularly clear. The medical report and the assessment seemed to describe fairly low level depression or anxiety. There was no suggestion in the correspondence from the Respondent or on his behalf that this conduct occurred as a result of the medical condition but rather that his medical condition was in the background. It would be difficult to see how the described medical condition would explain such blatant and protracted lies. In the circumstances, the Tribunal concluded that little weight could be given to the significance of the medical evidence given that there was not enough detail therein to suggest any kind of causal connection.

The Tribunal had serious concerns in relation to the risk that would be presented to the public if the Respondent returned to practice. These were not just blatant lies on the part of the Respondent, but were repeated and elaborate and made over a period in excess of two years. In the circumstances, the Tribunal concluded that it had no choice but to make an order prohibiting the restoration of the Respondent's name to the Roll of Solicitors in Scotland.

In the circumstances, the appropriate award in relation to expenses was one in favour of the Complainers and the usual order with regard to publicity was appropriate.

Given what had been said by the Fiscal, the Tribunal considered it appropriate to allow the Secondary Complainer 28 days from the intimation of the Findings to lodge a written claim for compensation, if so advised.



**Colin Bell**  
**Vice Chairman**