

**THE SOLICITORS (SCOTLAND) ACT 1980  
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL**

**FINDINGS**

**in Complaint**

**by**

**THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND, 26  
Drumsheugh Gardens, Edinburgh**

**against**

**MARK DAVID SHEPPARD  
residing at 91 Coillesdene Avenue,  
Edinburgh**

1. A Complaint dated 17 October 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Mark David Sheppard, residing at 91 Coillesdene Avenue, Edinburgh (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. Answers were lodged by the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 28 February 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 28 February 2008. The Complainers were represented by their Fiscal, James Reid, Solicitor, Glasgow. The Respondent was present and represented himself.

5. Deletions were agreed to the Respondent's Answers which resulted in the facts, averments of duty and averments of professional misconduct in the Complaint being admitted. No evidence was led.
6. The Tribunal found the following facts established
  - 6.1 The Respondent was born on 10 May 1969. He was admitted as a Solicitor on 28 June 1996. He was enrolled as a Solicitor in the Register of Solicitors in Scotland on 2 July 1996.
  - 6.2 From 8 July 1996 to 19 September 1997 the Respondent was an employee with Lawford Kidd, Solicitors, Edinburgh. From 22 September 1997 to 4 September 1998 he was an employee with Archibald Campbell & Harley, Solicitors, Edinburgh.
  - 6.3 He was an employee with the said Lawford Kidd from 7 September 1998 to 30 April 1999, an Associate with the firm from 1 May 1999 to 31 October 2001, a Partner with the firm from 1 November 2001 to 1 May 2004 and an employee from 2 May 2004 to 28 May 2004.
  - 6.4 He was a Partner with The Anderson Partnership, Solicitors, Glasgow from 31 May 2004 to 23 November 2005.
  - 6.5 The Respondent's name was removed from the Roll of Solicitors by the Law Society on 1 September 2007 under the powers contained in paragraphs 1(b) and (d) of Schedule 2 to the Solicitors (Scotland) Act 1980.
  - 6.6 Mr A suffered injury in a road traffic accident on 5 October 2001. On a recommendation from English Solicitors, Mr A instructed Lawford Kidd, Solicitors, Edinburgh in December 2001. The Respondent acted for Mr A in his claim. When the Respondent became a Partner with The Anderson Partnership

on 31 May 2004, the Respondent continued to accept instructions from Mr A who then became a client of The Anderson Partnership.

- 6.7 A claim was intimated. A Court of Session Action was raised prior to January 2004 against the other party involved in the road accident on 5 October 2001, namely, Company 1. Liability for the accident was not disputed by Company 2, the Insurers of Company 1 and the Action in the Court of Session proceeded on the basis that the quantum of the claim could not be agreed between the parties.
- 6.8 Following the raising of the Court Action the Respondent advised Mr A on various occasions that the Court Action had settled when no such settlement had been achieved. He advised Mr A that inter alia the case had settled at £1.3 million, £1.7 million, £1.8 million and £1.97 million in damages.
- 6.9 The Respondent advised Mr A that payment in settlement of his damages claim could not be obtained from Company 1's Insurers, Company 2. He advised Mr A that the Insurers had gone into liquidation. This was not true. In support of his claim that the Insurers had gone into liquidation and to explain the continuing delay in "settlement", the Respondent made further untrue representations to Mr A including inter alia that the Liquidators had been sacked and that an attempt to sell Company 2 had fallen through.
- 6.10 In respect of the alleged liquidation of Company 2, the Respondent advised Mr A that Liquidators had been appointed by the Court, that they had failed to keep the Court advised of progress and as a result the Court had made an award to Mr A against the Liquidators amounting to £55,000. Company 2 had

not been liquidated, there were no Liquidators and no award of £55,000 had been made to Mr A.

- 6.11 On the basis that his claim had “settled”, Mr A proposed to purchase heritable Property 1. In an attempt to obtain a loan for Mr A from the Royal Bank of Scotland, the Respondent misrepresented in a letter to the Royal Bank dated 27 July 2005 that the Court Action had settled for £1.9 million when it had not so settled.
- 6.12 In respect of the proposed purchase of Property 1, Mr A had instructed Messrs Martin & Co, Solicitors. On 22 June 2005 the Respondent misrepresented to Martin & Co that he had received funds from Mr A in respect of the proposed purchase. He had received no such funds.
- 6.13 The Respondent advised Mr A that the Court had awarded him various interim payments. No such payments had been awarded by the Court. The Respondent made seven payments to Mr A totalling £74,541.01 by cheques dated respectively, 4 November 2003, 12 December 2003, 21 January 2004, 9 February 2004, 1 March 2004, 12 March 2004 and 5 April 2004. The cheques were issued from the firm funds of Lawford Kidd. Mr A ultimately required to repay the said £74,541.01 to Lawford Kidd.
- 6.14 On 22 November 2004 the Respondent authorised an electronic transfer payment (CHAPS) by The Anderson Partnership to a Mr and Mrs B of £26,549.62. The Anderson Partnership was not due to make any such payment to Mr and Mrs B. In order to make the payment the Respondent had used the proceeds of eleven cheques payable to The Anderson Partnership in respect of judicial expenses from Insurance UK, Zurich Insurance, Tesco Insurance, Norwich Union, Simpson and Marwick, NIG

Insurance, Link Insurance, Norwich Union, Tesco Insurance, BTO and Churchill Insurance, said cheques totalling £26,549.62. The Respondent misappropriated £26,549.62 and paid it to Mr and Mrs B.

- 6.15 The Respondent received and encashed three cheques from Diamond Insurance, E-Sure and Royal & Sun Alliance totalling £9,609.56. Said cheques represented payments of judicial expenses due to The Anderson Partnership. The Respondent credited the sum of £9,609.56 to the account of Mr C in a claim against Company 3. None of the cheques related to the Mr C's claim.
- 6.16 On 22 November 2004 the Respondent encashed a cheque from Wren Insurance payable to The Anderson Partnership for £2,488.22. Said payment represented judicial expenses in the case of Mr D. The Respondent paid said £2,488.22 to Mrs E who appeared to be a client of Lawford Kidd, Solicitors. The Respondent misappropriated said sum.
- 6.17 On 4 November 2004 the Respondent encashed three cheques totalling £18,096.93 from Reilsen, AXA Insurance and Churchill Insurance, all in respect of judicial expenses due to The Anderson Partnership and allocated the proceeds to an account for a client, Mr F. On 9 November 2004, by electronic transfer, he paid the sum of £18,096.93 to Mr G from said account and misappropriated the said sum.
- 6.18 On 15 December 2004 the Respondent encashed a cheque for £824.37 from Transportation Claims for judicial expenses due to The Anderson Partnership in respect of an account for Ms H in a claim against Company 4. On 20 November 2004, by electronic transfer, he paid the said sum of £824.37 to Mr G from said account and misappropriated the said sum.

- 6.19 The Respondent acted for Ms I in a claim against Mr J. He advised the client that the claim had settled at £5,000. The claim had actually settled at £3,000. The expenses payable to The Anderson Partnership had been agreed at £2,747.64. On 5 September 2005 the Respondent encashed a cheque in settlement of said expenses at £2,747.64 and on 9 September 2005 paid £2,000 to Ms I. The Respondent misappropriated £2,000.
- 6.20 The Respondent acted for Mr K. He misrepresented to the client that the case had settled at a figure of £10,000 when it had in fact settled at £5,500. Expenses were agreed at £4,026.64. The Respondent misappropriated the said £4,026.64 and paid it to Mr K.
- 6.21 The Respondent acted for Mr L in a claim against Mr G. The client, as Pursuer, had been ordained to attend a medical examination but failed to do so. Decree of Absolvitor was granted to the Defender. The Respondent misrepresented to the Client Pursuer that the case had settled at £4,700 and misrepresented that there were difficulties in obtaining payment from the Defender's Insurers.
- 6.22 The Respondent acted for Mr M in a claim against Company 5. The claim was settled at £1,500 plus expenses. The Respondent misrepresented to the Pursuer that settlement had been in the sum of £2,250. A cheque for £1,500 was received and paid by the Respondent to the Pursuer on 25 July 2005. The Respondent misrepresented that said payment was an interim payment.
- 6.23 The Respondent acted in a claim for Mr N. He misrepresented to the client that an offer had been received to settle at

£7,316.40. No such offer had been made. The case at that point was ongoing.

6.24 The Respondent acted for Mr O. Mr O appeared to have suffered an accident in or about January 2002. The Respondent misrepresented to Mr O that his claim had settled at a sum of £9,600. There was no settlement. In any event, the claim appeared to be time-barred.

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

7.1 his misappropriation of funds from two different firms of solicitors of which he was a partner;

7.2 his misrepresentations to his client Mr A, his client's lenders and another firm of solicitors;

7.3 his breaches of Rule 8 (1) and Rule 8 (4) of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Funds Rules 2001 in that he credited several cheques representing payments of judicial expenses to other clients accounts.

8. Having heard a submission by the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 28 February 2008. The Tribunal having considered the Complaint dated 17 October 2007 at the instance of the Council of the Law Society of Scotland against Mark David Sheppard, residing at 91 Coillesdene Avenue, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his misappropriation of funds, misrepresentations to his client, lenders and another firm of solicitors

and his breaches of Rule 8 (1) and Rule 8 (4) of the Solicitors (Scotland) Accounts, Accounts Certificate, Professional Practice and Guarantee Fund Rules 2001 by cashing various cheques which represented payments of judicial expenses and crediting them against the wrong client accounts; Given that the Respondent's name has been removed from the Roll of Solicitors in Scotland, Censure the Respondent; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**

**Chairman**



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

**IN THE NAME OF THE TRIBUNAL**

**Chairman**

**NOTE**

The Tribunal noted that the Respondent agreed to delete the second, eighth, tenth, eleventh, and fifteenth sentences from paragraph 2.3 of his Answers.

The Tribunal noted that the Respondent accepted the averments of fact, duty and professional misconduct contained in the Complaint and accordingly it was not necessary for any evidence to be led.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Reid stated that the averments in relation to Mr A arose in connection with a road accident in 2001 when Mr A was injured. Mr A instructed Messrs Lawford Kidd and the Respondent acted for him and took the case with him when he moved to the Anderson Partnership. The only issue which was in dispute in the case was one of quantum. The Respondent misled Mr A regarding the progress of the action and at various different times advised him that the case had settled and that damages worth over a million pounds had been awarded to him.

Mr Reid advised that the Respondent then misled Mr A further by advising him that the insurers involved in the case had gone into liquidation. This was not true. On the basis that his claim had settled, Mr A entered into missives to purchase Property 1. In an attempt to obtain a loan for Mr A from the Royal Bank of Scotland, the Respondent represented in a letter to the bank that the court action had settled for 1.9 million pounds when no such settlement had been achieved. Mr A instructed Messrs Martin & Co. Solicitors to act for him in the proposed purchase of Property 1. The Respondent misrepresented to those solicitors that he had received funds from Mr A in respect of the proposed purchase. No such funds had been received.

Mr Reid advised that the Respondent then told Mr A that the court had awarded him various interim payments. Seven payments totalling £74,000 were made by the Respondent from the firm funds of Messrs Lawford Kidd. Mr A required to repay the £74,000 to Lawford Kidd.

Mr Reid stated that between November 2004 and September 2005, the Respondent misappropriated various funds due to clients of the Anderson Partnership and paid them into other client's accounts.

Mr Reid stated that he understood that the Respondent kept in very regular contact with Mr A, sometimes as regularly as on a daily basis. He stated that Mr A was completely misled as to what was happened. He advised that when this misrepresentation came to light, Mr A was placed in a very difficult and stressful situation and required to undertake a whole series of lengthy meetings with the Anderson Partnership in order to sort matters out.

In response to a question from the Tribunal, Mr Reid confirmed that there were concluded missives in relation to the purchase of Property 1 which Mr A was not able to fulfil. Mr A confirmed to the Tribunal that the sum of £116,000 was due to be paid as a result of the failure to conclude the purchase but stated that the Anderson Partnership settled this amount. Mr A stated that he had spent thousands of pounds in relation to the proposed purchase on surveyor's fees, legal fees and outlays.

### **SUBMISSIONS FOR THE RESPONDENT**

The Respondent offered his sincere personal apologies for his actions to Mr A. The Respondent referred the Tribunal to the Inventory of Productions which were lodged. He stated that since the events which have been outlined came to light, he has suffered bankruptcy, and had his house repossessed and has had significant health problems. The Respondent stated that he has not renewed his practising certificate and has no intention as things stand of ever trying to renew his practising certificate. He stated that he is presently caring for his partner and his children.

He asked the Tribunal to take into account that he also paid some of his own money to Mr A as part of his attempt to cover up his deceit. He stated that he paid Mr A around £15,500 and loaned him a further £10,000 which he will not attempt to recover in the circumstances.

## **FURTHER SUBMISSIONS FOR THE COMPLAINERS**

In response to a question from the Tribunal, Mr Reid advised that the Respondent's name was removed from the Roll of Solicitors by the Law Society in terms of paragraphs 1 (b) and (d) of Schedule 2 to the Solicitors (Scotland) Act 1980 on 1 September 2007. The Respondent indicated that he had not applied to remove his name from the Roll of Solicitors and was not aware that this had happened.

## **DECISION**

The Tribunal had regard to all the productions in this case and in particular to the details of the Respondent's medical condition which he was suffering from at the time that these failures occurred. The Tribunal noted that the Respondent had attended the Tribunal and freely admitted his failures and apologised in person to the lay Complainer. The Tribunal noted that the Respondent did not benefit personally from the misappropriation of funds and in fact had lost a significant amount of money due to his conduct. The Tribunal also took into account the fact that the Respondent has been sequestered and has lost his home.

However, the essential and absolute qualities of a solicitor are honesty, truthfulness and integrity. It is essential for the public to have confidence in the legal profession that solicitors act with integrity. The Respondent's conduct in misappropriating funds and misleading his client has brought the legal profession into disrepute. In considering sanction, the Tribunal noted that the Respondent's name had already been removed from the Roll of Solicitors by the Law Society under an administrative process. The Tribunal had regard to the Respondent's current medical condition and lack of employment and considered that he was not in a position to pay a fine. Accordingly the Tribunal considered a Censure to be the appropriate sanction in this case having regard to the restricted sanctions available. The Tribunal made the usual Order with regard to publicity and awarded that expenses on the basis of the last published Law Society's table of fees for general business with a unit rate of £11.85.

**Chairman**