

**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, 26  
Drumsheugh Gardens, Edinburgh**

**against**

**ROY WILLIAM ANDREW  
MILLER. 6 St Ninian Terrace,  
Crown Street, Glasgow**

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Roy William Andrew Miller, 6 St Ninian Terrace, Crown Street, Glasgow (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. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 20 August 2012 and notice thereof was duly served on the Respondent.
4. When the Complaint called on 20 August 2012 the Respondent was present and represented by his solicitor Gerry McWilliams, Solicitor, Glasgow. The Law Society were represented by their fiscal Grant Knight, Solicitor, Edinburgh

5. The Case was adjourned for a period of 4 weeks to allow the Respondent's agent to carry out investigations, obtain a medical report and discuss agreement of a Joint Minute.
6. The case called again on 27 September 2012. The Respondent was present and represented by Gerry McWilliams, Solicitor, Glasgow. The Law Society were represented by their fiscal Grant Knight, Solicitor, Edinburgh.
7. A Joint Minute was lodged admitting the averments of fact, averments of duty and averments of professional misconduct in the Complaint as amended. An amended copy of the Complaint dated 26 September 2012 was also lodged with the Tribunal.
8. The Tribunal found the following facts established
  - 8.1 The Respondent is a Solicitor enrolled in the Registers of Scotland. His date of birth is 22<sup>nd</sup> September 1961 and he was enrolled as a Solicitor on 11<sup>th</sup> December 1987. He operates as a sole practitioner under the name of Miller & Company and has a place of business at 6 St Ninian Terrace, Crown Street, Glasgow.
  - 8.2 On or about 21<sup>st</sup> April 2009, NM then residing at Property 1 instructed the Respondent in respect of a claim for aliment for her son and that from her former husband who resided on the Isle of Lewis. The Respondent requested a payment of £200. The Respondent entered into initial correspondence with NM's former husband in regard to the claim for aliment but the matter was not resolved. The Respondent advised on the possibility of raising proceedings with the benefit of legal aid. No application for Legal Aid was lodged. On or about 30<sup>th</sup> March 2010, NM sent an email to the Respondent expressing her concerns and requesting return of the payment of £200 and her personal

documentation. The Respondent failed to respond to this email and the requests therein.

- 8.3 On 22<sup>nd</sup> April 2010, NM lodged a complaint with the Scottish Legal Complaints Commission (hereinafter “SLCC”). By letter dated 18<sup>th</sup> June 2010, the complaint was intimated by the SLCC to the Respondent and requesting a response and delivery of NM’s file within a period of 14 days. The Respondent failed to respond. Further letters were issued by the SLCC to the Respondent seeking a response and his co-operation on 13<sup>th</sup> and 16<sup>th</sup> July, 18<sup>th</sup> August, 23<sup>rd</sup> September, and 19<sup>th</sup> October, all 2010. The Respondent failed to respond.
- 8.4 In light of the Respondent’s failure to respond to the correspondence issued by the SLCC, the SLCC referred matters to the Regulation Department of the Complainers on 28<sup>th</sup> October 2010. The Complainers initially wrote to the Respondent on 1<sup>st</sup> November 2010 and no reply was received. On 20<sup>th</sup> December 2010 the Complainers intimated a formal complaint to the Respondent. Again the Respondent failed to respond. On 2<sup>nd</sup> February 2011 the Complainers issued a Notice to the Respondent under Section 15(2)(i)(i) of the Solicitors’ (Scotland) 1980. The Respondent failed to respond. Also on said date, the Complainers served a further Notice in terms of Section 48(1)(a) of the Legal Profession and Legal Aid (Scotland) Act 2007 calling upon the Respondent to deliver all documentation in his possession in relation to NM. The Respondent failed to respond. A further Notice in terms of the said Section 15(2)(i)(i) of the 1980 Act was served on the Respondent by the Complainers on 16<sup>th</sup> March 2011 and a further complaint was also intimated to him on that date. Again he failed to respond.

8.5 A Petition was thereafter presented by the Complainers in terms of Section 48(1)(a) in Schedule 4 of the Legal Profession and Legal Aid (Scotland) 2007 at the Court of Session on 21<sup>st</sup> June 2011, craving an Order against the Respondent ordaining him to produce or deliver all or any files or documentation held by him in respect of NM. The said Petition was duly served upon the Respondent. He failed to lodge any Answers and the crave of the Petition was granted on 22<sup>nd</sup> July 2011. A copy of the court's interlocutor in that respect was then served upon the Respondent on 26<sup>th</sup> July 2011 requiring it to be obtempered within a period of 14 days. The Respondent failed to obtemper the court's interlocutor, and on 28<sup>th</sup> October 2011 having been ordained to appear at the Bar of the Inner House of the Court of Session to explain his failure to obtemper the court's interlocutor, was found guilty of contempt of Court and admonished. The Complainers received the aforementioned file immediately prior to his Court appearance.

9. Having heard submissions from the Law Society Fiscal and the Respondent's representative, the Tribunal found the Respondent guilty of Professional Misconduct in respect of:

9.1 His failure to return a payslip and an HMRC Tax Credit Review statement and the said payment of £200 when requested to do so by his client

9.2 His failure or delay in responding to correspondence and Statutory Notices from the Scottish Legal Complaints Commission and Law Society of Scotland.

9.3 His failure or delay in responding to Court proceedings instigated against him by the Law Society of Scotland within

the Court of Session, and failure to obtemper an Order of the Court and he was thereafter found guilty of contempt

10. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 27th September 2012;The Tribunal having considered the Complaint at the instance of the Council of the Law Society of Scotland against Roy William Andrew Miller, 6 St Ninian Terrace, Crown Street, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his failure to return a payslip and a HMRC Tax Credit Review Statement and a payment of £200 when requested to do so by his client, his failure or delay in responding to correspondence and statutory notices from the Scottish Legal Complaints Commission and the Law Society of Scotland and his failure or delay in responding to Court proceedings instigated against him by the Law Society of Scotland within the Court of Session and failure to obtemper an Order of the Court and his being found guilty of contempt Censure the Respondent; Fine the Respondent in the sum of £250.00 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.

(signed)

**Malcolm McPherson**

**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

**IN THE NAME OF THE TRIBUNAL**

**Vice Chairman**

**NOTE**

As a Joint Minute of admissions was lodged admitting the terms of the original Complaint, subject to a number of amendments, it was not necessary for any evidence to be led. The fiscal lodged an amended Complaint dated 26 September 2012 with the Tribunal. The Tribunal noted that the Respondent accepted the facts, averments of duty and averments of professional misconduct in the amended Complaint.

**SUBMISSIONS FOR THE COMPLAINERS**

Mr Knight stated that in fairness to the Respondent he had to point out that all matters related to a Complaint by his former client and his failure to reply to correspondence and produce a small file containing 12 sheets of paper. If matters had been addressed by the Respondent at the time, probably the worst that would have happened would have been a finding of inadequate professional service. Instead the Respondent had had to pay £5000 expenses in connection with the Court of Session proceedings and had a finding of contempt against his record. The Respondent would also have the expenses of today's proceedings and would have a finding of professional misconduct against him. This was a high price to pay. Mr Knight confirmed that prior to this matter the Respondent had never come to the attention of the Law Society or the Tribunal.

**SUBMISSIONS FOR THE RESPONDENT**

Mr McWilliams referred the Tribunal to the terms of the adjusted Complaint and to the medical report which he had lodged. He emphasised that the Respondent gave a complete apology for what had happened and accepted that his conduct amounted to professional misconduct. The Respondent was profoundly and sincerely sorry and ashamed of what had happened. Mr McWilliams pointed out that this was a one off aberration which had been very costly to the Respondent. Mr McWilliams submitted that the Respondent was a solicitor who in his experience and the experience of others, helped people to resolve matters.

In this case he had already sorted out the client's divorce and was then helping the client in connection with obtaining aliment from her husband. Her husband was out of the UK and accordingly matters were not straight forward. The Respondent did manage to get an offer from his client's husband but this was not accepted by her. He was trying to help but this was no excuse for what he had caused to happen.

Mr McWilliams emphasised that the Respondent had never previously had any professional difficulties but had felt the affects of the downturn. At the time he had been involved in two actions with HMRC during 2010 and 2011. These matters had now been resolved but at that time he was having to juggle running his practice together with dealing with these actions. Mr McWilliams advised that the Respondent had managed to keep going and had no other difficulties with his practice. However at the time he was not coping. Mr McWilliams explained that the Respondent just froze and put the matter into a corner and hoped it would go away. Mr McWilliams explained that there was only one other matter that he was helping the Respondent resolve at present. The Respondent's practice was fortunately not diminished.

Mr McWilliams explained that reality kicked in for the Respondent when the matter went to the Court of Session. He instructed an advocate to appear and the file was returned and he started dealing with matters. Lord Gill gave him a fair hearing. At this time the Respondent was feeling terror as he realised that matters should never have got this far.

Mr McWilliams explained that the Respondent was moving on and now had a better work and life balance. The Respondent commuted between Glasgow and Edinburgh each day. Mr McWilliams explained that the Respondent came into the profession to assist people and had had a sole practice in the Gorbals in Glasgow for 22 years. The Gorbals was like a community and he provided a service to the community. The Respondent traded on his reputation and had a good reputation in the area. Mr McWilliams said that the Respondent knew that he had let himself, his family and the profession down and also his secretary because he had put her job at risk. Mr McWilliams asked that the Respondent be given a chance to carry on on the strict understanding that he would not allow anything like this to happen again. The



Respondent had entered into an agreement with another sole practitioner, Jeff Rankin, to the effect that if anything happened with the Scottish Legal Complaints Commission, each would refer it to the other to deal with so that the matter would be dealt with independently and objectively. Mr McWilliams said that the Respondent asked the Tribunal sincerely to give him a chance to make amends and move on. Mr McWilliams asked the Tribunal to consider imposing a Censure in the case. In response to a question from the Chairman in connection with the Respondent's financial position, Mr McWilliams confirmed that the Respondent had drawings of approximately £2000 per month but that his wife also had a salary.

## **DECISION**

The Tribunal noted that the Respondent's conduct in this case related to one transaction. However the Respondent failed to communicate effectively with his client and with the Commission and the Law Society and also the Court of Session. Failure on the part of solicitors to comply with the Commission, the Law Society and the Courts is prejudicial to the reputation of the legal profession. The Tribunal found it bizarre that the Respondent let matters get as far as the Court of Session, resulting in a finding of contempt made against him. In the circumstances the Tribunal was satisfied that the Respondent's conduct was serious and reprehensible enough to amount to professional misconduct.

The Tribunal however noted the Respondent's previously unblemished record and the Respondent's sincere apology to the Tribunal. The Tribunal did not consider that the public would be at risk if the Respondent was allowed to continue in private practice unsupervised. The Tribunal also noted that the Respondent was providing a service to the community of Gorbals as a sole practitioner. The Tribunal further noted that the Respondent had already paid a heavy price for his conduct. The Tribunal viewed the Respondent's conduct as a serious matter and found his stupidity in letting matters go that far concerning but did not consider that there was anything sinister in the Respondent's conduct. The Tribunal was also particularly impressed by the fact that the Respondent has taken steps to ensure that nothing like this will happen again. The Respondent has entered into an agreement with another sole practitioner to deal with matters which come in from the Commission in the future and the Tribunal find this

to be a positive and sensible way forward. In the circumstances the Tribunal felt that a Censure plus a fine of £250 would be sufficient penalty. The Tribunal made the usual Order with regard to publicity and expenses.

**Vice Chairman**