

**THE SOLICITORS (SCOTLAND) ACT 1980
THE SCOTTISH SOLICITORS' DISCIPLINE TRIBUNAL
(PROCEDURE RULES 2008)**

F I N D I N G S

in Complaint

by

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

against

**KEVIN MURPHY, Solicitor,
Hamilton Burns & Company
Solicitors, Carlton Buildings, 63
Carlton Place, Glasgow**

1. A Complaint dated 18 November 2011 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Kevin Murphy, Solicitor, Hamilton Burns & Company Solicitors, Carlton Buildings, 63 Carlton Place, 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 Secondary Complainer is Ms A (hereinafter referred to as "the 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 6 March 2012 and notice thereof was duly served on the Respondent.

5. The hearing took place on 6 March 2012. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, Edinburgh. The Respondent was present and represented by William Macreath, Solicitor, Glasgow.
6. Mr Macreath advised the Tribunal that his client was tendering a plea of guilty to the Complaint and accepted that he was guilty of professional misconduct as averred therein. Ms Johnston advised that the Secondary Complainer had originally sought compensation but had reconsidered her position and no longer wants to make an application for compensation.
7. The Tribunal found the following facts established
 - 7.1 The Respondent is a Solicitor enrolled in Scotland. The Respondent was born on 11 July 1979. He was enrolled on the 26 July 2004. On 1 January 2010 he became a partner with Hamilton Burns & Company, Glasgow prior to which he was employed by that firm as an employee then as an Associate.
 - 7.2 The Complainers received intimation from Mr C of a firm of solicitors who made a complaint on behalf of Ms A about the Respondent. In particular it was alleged that he had written directly to Ms A when it was perfectly clear that she was represented by a firm of solicitors and by doing so may have breached paragraph 14 (2) of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008. The matter was referred to the Scottish Legal Complaints Commission (SLCC) who considered the Complaint and, in terms of the Legal Profession and Legal Aid (Scotland) Act 2007 Section 6, remitted the Complaint to the Complainers to investigate.
 - 7.3 By letter dated 4 October 2010 the Complainers wrote to the Respondent intimating their obligation under the 2007 Act

Section 47(1) to investigate complaints relating to the conduct of enrolled Solicitors. The letter advised that the complaint was based on consideration of the information provided by Mr C on behalf of Ms A and the SLCC and included copies of the initial letter and letters of 5 and 6 July 2010.

- 7.4 Mr C acted for Ms A from October 2008 in various forms of litigation involving her personal relationship with Mr B. For most of that time Mr B was represented by the Respondent and his firm. Ms A had been a partner in the Immigration Department of a firm of solicitors and a dispute had arisen between Mr B and that firm about invoices he had submitted to it for his interpreting services. A firm of solicitors had written to the Respondent on 20 August 2009 in some detail about their client's claim inviting clarification of his client's position. On 19 March 2010 the Respondent wrote to a firm of solicitors about issues relating to contact with the couple's children and also the allegation that Ms A had acted fraudulently in issuing invoices on behalf of Mr B's interpreting company. By letter dated 29 March 2010 a firm of solicitors replied on behalf of Ms A refuting the allegation, making it clear that she had not engaged in fraudulent activity and suggesting that great caution should be exercised before making further references to fraud.
- 7.5 On 28th April 2010 acting under pressure from his client, and in spite of the pre-existing course of correspondence about the issue between agents, the Respondent wrote directly to Ms A without the agreement of her solicitor, who continued to act for her, and without warning to that solicitor. He wrote about the invoices which his client claimed she had completed on his behalf without his consent. The letter stated that Mr B had contacted the police in relation to the matter and that they had spoken to a named individual at the Scottish Legal Aid Board. The letter implied that she had acted fraudulently and had received money she was not

entitled to in the sum of £9,500. Payment of that sum was demanded under threat that she would be reported to her professional body, the Law Society of Scotland. The Respondent sent the letter to Ms A both by open office fax and Legal Post at her business address, namely Company 1 in Glasgow, in the full knowledge that the contents would be seen by her staff. Staff members thereby became aware that there were allegations of fraud, which it was stated had been reported to the police and the Scottish Legal Aid Board and a threat to report Ms A to the Law Society of Scotland.

7.6 The Respondent's action in sending the said letter as he did caused Ms A significant embarrassment, stress and anxiety. He was aware that she had already suffered acute stress which had affected her health due to his involvement in prior court proceedings for Mr B. Her health problems were disclosed in her defences and in a medical report both of which were intimated to him.

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

8.1 his sending a letter direct to the client of another solicitor both by fax and by Legal Post to the client's business address in breach of paragraph 14(2) of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008.

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

Edinburgh 6 March 2012. The Tribunal having considered the Complaint dated 18 November 2011 at the instance of the Council of the Law Society of Scotland against Kevin Murphy, Solicitor, Hamilton Burns & Company Solicitors, Carlton Buildings, 63 Carlton

Place, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his sending a letter direct to the client of another solicitor both by fax and by Legal Post to the client's business address in breach of paragraph 14(2) of the Solicitors (Scotland) (Standards of Conduct) Practice Rules 2008; Censure the Respondent; Fine him in the sum of £500 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)

Alistair Cockburn

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

Mr Macreath tendered a plea of guilty to the Complaint and accepted that his client was guilty of professional misconduct as averred therein.

A copy of the letter dated 28 April 2010 sent by the Respondent to Ms A was lodged by Ms Johnston on behalf of the Complainers.

No evidence required to be led.

SUBMISSIONS FOR THE COMPLAINERS

Ms Johnston advised that as all the averments in the Complaint were accepted by the Respondent she had nothing further to add to the terms of the Complaint.

Ms Johnston advised that the Secondary Complainer had initially indicated that she wanted to make application for compensation as stated in the Complaint. However, Ms Johnston advised that the Secondary Complainer had reconsidered her position. The Secondary Complainer had advised the Complainers that she had originally intended to donate any compensation to charity. However, she had reconsidered the matter and now felt that in the light of the Respondent's attitude in accepting his failure and his apology, she no longer wanted to make an application for compensation.

SUBMISSIONS FOR THE RESPONDENT

Ms Macreath advised that he was instructed in this matter in May 2011 and at that time he wrote to the Complaints Investigator at the Law Society setting out submissions in mitigation on behalf of the Respondent. The matter was then considered by the Professional Conduct Committee and following the outcome of that he wrote to Ms Johnston stating that he anticipated being in a position to tender a plea of guilty when a Complaint was served.

Mr Macreath stated that he was obliged to Ms Johnston for her comments regarding the position of the Secondary Complainer. He advised that the Secondary Complainer had graciously accepted the Respondent's apology and his contrition.

Mr Macreath advised that the Respondent is relatively new to the profession having been admitted in 2004. He was made an assistant in 2005 and then an associate in 2007 and only became a partner in January 2010. Mr Macreath submitted that that date is significant as the date of the letter complained of was 28 April 2010, a short time after he became a partner.

Mr Macreath stated that Mr B was in a lengthy contact dispute with Ms A regarding their children. Mr B and Ms A operated a limited company offering interpreting services. Mr B acted as an interpreter generally appearing in the Immigration Courts. He also provided interpretation services to Hamilton Burns & Co. Mr B originally instructed Ms Higson of the Respondent's firm and when she left the firm the case was dealt with by another solicitor and was only transferred to the Respondent in July 2009.

Mr Macreath advised that the limited company operated by Mr B and Ms A was deregistered. Mr B personally blamed Ms A for the non payment of a number of outstanding invoices for interpretation fees. Mr C of a firm of solicitors dealt with a number of complaints made by Mr B, some directly and some through Hamilton Burns & Co. Previously Mr B had insisted that a letter be written to Mr C regarding the outstanding invoices. Mr C replied to that letter with a strong rebuttal.

Mr Macreath advised that on the day that the letter was faxed, Mr B had come to Hamilton Burns & Co's offices on interpretation business and when that was concluded he insisted on seeing the Respondent without an appointment. The Respondent spoke with Mr B and was informed that Mr B had been told by the Scottish Legal Aid Board that certain payments had been made to Ms A for interpretation services which Mr B had provided but had not been paid for. At the insistence of Mr B, the fax dated 28 April 2010 was issued.

Mr Macreath advised that as soon as he was instructed in this matter, he wrote on 19 May 2010 to the Professional Conduct Committee taking no issue with the circumstances of the complaint. He invited the Professional Conduct Committee to uphold a complaint of unsatisfactory professional conduct. In that letter he set out the mitigating circumstances. He summarised this by indicating that there had been an unreserved apology by the Respondent and full contrition. He also pointed out that the letter was sent “without prejudice” and was therefore meaningless. However, despite that, Mr Macreath indicated in his letter that the letter of 28 April 2010 should never have been sent.

Mr Macreath asked the Tribunal to note that the letter was sent “without prejudice” and that it was sent following pressure from Mr B who refused to leave the office that day until it was sent.

Mr Macreath stated that the Respondent accepts that this was a serious error of judgment. Mr Macreath submitted that the Respondent was inexperienced. Mr Macreath accepted on behalf of the Respondent that the sending of the letter was a clear breach of the Rules and was aggravated by the fact that it was sent by fax to a solicitor’s office.

Mr Macreath referred the Tribunal to a previous case dealt with by the Tribunal prior to 1986 where the Tribunal considered the case of a solicitor acting for a wife in a matrimonial dispute who wrote direct to the husband even though he knew that he was legally represented. It was held in that case [DTD 428/79] that although the Respondent’s conduct was improper and fell below the standards expected of a reputable solicitor it did not amount to professional misconduct. However Mr Macreath conceded that in Paterson & Ritchie’s book, “Law, Practice and Conduct for Solicitors”, there is reference to a later case [DTD660/86] where the Tribunal was prepared to conclude that a direct approach to the client of another solicitor might be professional misconduct. Mr Macreath stated that on that basis the pleas of guilty to professional misconduct had been tendered.

Mr Macreath advised that Mr C of a firm of solicitors is a well experienced solicitor and highly regarded in family law matters. When the letter was brought to his

attention by his client he immediately raised it with the Professional Practice Committee of the Law Society and was advised by them that the letter should never have been sent to his client. Mr Macreath submitted that the Respondent recognised that position immediately and so has shown true contrition.

Mr Macreath stated that the Respondent had only been a partner for a very short period of time in a busy practice before the letter was sent. Mr B had previously been represented by another solicitor in the firm who then went on long term sick leave. At the same time the firm was short staffed as an assistant had left and had not yet been replaced. The Respondent was extremely busy but accepts that he should have dealt with the matter differently. Mr Macreath stated that the Respondent accepts that the sending of the letter was a serious error of judgment. Mr Macreath advised that Neil Michie, the senior partner of Hamilton Burns & Co. was present at the Tribunal and confirmed that following this complaint Mr Michie immediately put measures in place within the firm to ensure that he now oversees family matters.

Mr Macreath lodged two references on behalf of the Respondent. One was from Ian Fleming of Fleming & Reid, Solicitors and the other from Gerry Brown of Livingstone Brown, Solicitors. Mr Macreath advised that both solicitors who had submitted references had been fully advised of the background to the case.

In response to a question from the Chairman, Mr Macreath advised that Ms A had been distressed as a result of the contents of the letter and the fact that it was received by fax at her office rather than the fact that she was written to direct.

Ms Johnston confirmed that Ms A had been greatly distressed at the letter being received and read by her staff members.

DECISION

The Tribunal considered that despite the reason given in the letter for contacting Ms A directly, it was obvious from the background to this matter that there had been prior correspondence between the Respondent and Ms A's solicitor about these disputed invoices. The Tribunal considered that the terms of the Solicitors (Scotland)

(Standards of Conduct) Practice Rules 2008 in this regard were clear and unequivocal. The Tribunal considered the test in the case of Sharp-v-The Council of the Law Society of Scotland [1984] SC 129. The Tribunal was of the view that a clear breach of these Rules could be regarded by competent and reputable solicitors as a serious and reprehensible departure from the standards of those expected within the profession. The Tribunal concluded that in the circumstances of this case the Respondent's breach of the Rules amounted to professional misconduct.

In considering sanction, the Tribunal noted the Respondent's previous unblemished record and the references lodged on his behalf which indicated that this failure was out of character. The Tribunal also had regard to the pressure experienced by the Respondent and his lack of experience as a partner at the time of the incident. The Tribunal also took into account that the Respondent had appeared before the Tribunal, had accepted that he was guilty of professional misconduct and thus had shown insight into his failure. In all the circumstances, the Tribunal considered that the Respondent's failure was at the lower end of the scale of professional misconduct and that the appropriate sanction was a Censure and a Fine of £500. The Tribunal ordered that the Respondent be liable for the expenses of the Tribunal and of the Law Society in respect of this Complaint and made the usual order with regard to publicity.

Chairman