

**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

**ALAN ALEXANDER SLESSOR WILSON, A.C
Morrison & Richards LLP, 18 Bon Accord
Crescent, Aberdeen**

Respondent

1. A Complaint was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh (hereinafter referred to as "the Complainers") averring that Alan Alexander Slessor Wilson, A.C. Morrison & Richards LLP, 18 Bon Accord Crescent, Aberdeen (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Michelle Humphrey, 27 Mansefield Road, Aberdeen.
3. The Tribunal caused a copy of the Complaint as lodged to be served upon the Respondent. Answers were lodged for the Respondent.
4. In terms of its Rules, the Tribunal appointed the Complaint to be set down for a virtual procedural hearing on 16 May 2024 and notice thereof was duly served on the Respondent.
5. At the virtual procedural hearing on 16 May 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by Johnston Clark, Solicitor, Dundee. On the joint motion of parties, the Tribunal set the matter down for a hearing in person on a date to be afterwards fixed. The hearing was later fixed for 15 August 2024.

6. At the hearing on 15 August 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by Johnston Clark, Solicitor, Dundee. On the Fiscal's motion, the Tribunal made some amendments to the Complaint. The Respondent gave evidence. Parties made submissions.
7. Having given careful consideration to the terms of the Complaint, Answers, Joint Minute and parole evidence, the Tribunal found the following facts established:-
 - 7.1 The Respondent is Alan Alexander Slessor Wilson. He was born on 26 October 1951. He was enrolled and admitted as a solicitor on 8 April 1976. The Respondent commenced employment with A.C. Morrison and Richards on 1 January 1980 as a partner and is currently employed as a consultant for the firm. The Respondent is currently in possession of a practising certificate.
 - 7.2 The Respondent was instructed and acted on behalf of the Secondary Complainer's father in relation to the drafting of a will. The will was completed by the Respondent on 10 April 2014. The Secondary Complainer's father died in 2016. The Respondent had no part in winding up the estate of the Secondary Complainer's father. He was advised by the widow and executrix that there was no moveable estate available for a legal rights claim in Scotland.
 - 7.3 The will signed by the Secondary Complainer's father did not contain the witness's signature. The witness was a longstanding secretary to the Respondent. She failed to sign as witness at the time the Secondary Complainer signed the will, despite typing the testing clause. The wife of the Secondary Complainer's father had completed a will at the same time as her husband. In that instance the witness's signature was added contemporaneously.
 - 7.4 On 26 July 2019, the Respondent certified a copy of the will which did include the witness's signature.
 - 7.5 The Secondary Complainer had sight of a copy of the will, which was certified as a copy on 26 July 2019. She observed that the certified copy of the will had a witness signature adhibited to it, although the original will did not.

7.6 The Respondent admitted that in 2019 he asked his secretary, who was by then retired, to add her signature to the will.

8. Having considered the foregoing circumstances, the Tribunal found the Respondent not guilty of professional misconduct in respect of the averment that he:

8.1 Failed to act with competence and diligence when the father of the Secondary Complainer signed his will in 2014, in that the attestation clause was not completed by the purported witness to the signature of the Secondary Complainer's father at the time when the will was signed in 2014.

9. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect that he:

9.1 Failed to act with honesty and integrity when, on or around 26 April 2019, he certified a copy of the Secondary Complainer's father's will that was not a true copy of the will as signed by the Secondary Complainer's father in 2014, in that the certified copy included the name of a purported witness to the Secondary Complainer's father's signature that was not on the will at the time it was signed.

10. The Tribunal pronounced an Interlocutor in the following terms:-

Stirling, 15 August 2024. The Tribunal, having considered the Complaint at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Alan Alexander Slessor Wilson, A.C. Morrison & Richards LLP, 18 Bon Accord Crescent, Aberdeen; Finds the Respondent guilty of professional misconduct in respect of his breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011; Censures the Respondent; Fines him in the sum of £1,000 to be Forfeit to His Majesty; Finds the Respondent liable in respect of 66% of the expenses of both the Complainers and 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; Directs 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 Allows the Secondary Complainers 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office if so advised.

(signed)

Chris Mackay
Acting Vice Chair

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 17 SEPTEMBER 2024.

IN THE NAME OF THE TRIBUNAL



**Chris Mackay
Acting Vice Chair**

NOTE

At the Hearing on 15 August 2024, the Tribunal had before it the Record, a Joint Minute, an Inventory of Productions for the Complainers, two Inventories of Productions for the Respondent, a List of Witnesses for the Respondent and a List of Authorities for the Respondent.

The Fiscal indicated that following discussion with Mr Clark, he wished to make some deletions to the Complaint. The Tribunal allowed paragraphs 4.7-4.10, 5.3-5.6, and 6.4 to be deleted. The Fiscal confirmed that the Complainers no longer sought a conviction in relation to the averment of misconduct at paragraph 6.4. This left only two averments of misconduct for the Tribunal's consideration. They were at paragraphs 6.2 and 6.3 of the Complaint. Parties said that they did not intend to refer to Production 2 for the Complainers and that the Tribunal should have no regard to it. Mr Clark confirmed that the Respondent pleaded not guilty to professional misconduct. The averments of fact and duty were admitted but, he submitted, did not meet the threshold for professional misconduct, singly or *in cumulo*.

EVIDENCE FOR THE RESPONDENT**Witness One: The Respondent**

The Respondent gave evidence on oath. He adopted his affidavit as his evidence-in-chief. The affidavit was contained at Production 2 of the Second Inventory of Productions for the Respondent.

The Respondent confirmed in cross-examination that the will was signed on 10 April 2014, and not 10 May 2014 as was noted in his affidavit. He said that when the testator signed the will, the Respondent realised that he could not be a witness because he was also an executor. Therefore, he asked his secretary to be a witness. She was familiar with witnessing documents. She had worked with the Respondent for more than 20 years and was very competent.

The Respondent said he could not recall exactly happened when the secretary was in the board room. The usual process was for a witness to add their signature there and then. On that occasion, the secretary gathered up the documents and "scurried away". He did not realise at the time that she had not added her signature, although she did type the testing clause. He did not look at the copy wills when they were sent out to the clients.

The Respondent realised in 2019 that there was no witness signature on the will. This was three years after the testator had died. The testator's wife asked him to do some work. He pulled out her will and her

husband's was there too. The Respondent had not had any occasion to look at it when he died. He noticed at that stage that the secretary had made a mistake. She was by then retired. He contacted her and "quizzed" her about it. She confirmed that she had completed the testing clause. He asked her to sign the will as witness. If she had felt uncomfortable, she would not have done so. She recognised the font in the testing clause as the one she used. The Respondent said he genuinely thought that he was correcting a mistake or an oversight on her part.

The Fiscal asked the Respondent about his decision to certify a copy of the will which contained the witness's signature. He said he considered that the will was unchanged. It did not enter his head that the absence of a witness signature affected his ability to certify the will as a true copy. He said that with the benefit of hindsight he realised that he ought not to have certified the copy as they were different. The Respondent agreed that he should have adhered to the Requirements of Writing (Scotland) Act 1995. The will could have been set up under section 4 of that Act, but he had never had to do that before. He agreed there would be a cost to setting up the will and his firm would have had to bear that expense.

The Fiscal suggested that the Respondent's actions had been dishonest. The Respondent said he believed that he was correcting an oversight. It was not as if the secretary had not witnessed the signature. She had verified with the testator that it was his signature.

The Respondent said that the surviving spouse had asked him to provide her with a copy of the will which bore the witness's signature. The Respondent had it translated and apostilled. He gave it to the surviving spouse in connection with litigation in Turkey.

The Fiscal put it to the Respondent that he had taken a short cut because he thought it would never come to light. The Respondent said he thought he was correcting an admission. It was a practical course. There was no dishonesty to the situation. He did not realise how to properly remedy the situation until 2021. By that time, he had to take a step back. He was a consultant and no longer a partner with the firm. The matter was referred to the complaints partner and the litigation partner. He believed they took advice from the Law Society and the insurers. He did not seek advice from the Law Society when he realised that the witness signature was missing.

The Fiscal referred the Respondent to responses he had made to the Law Society which were contained in the recommendation drafted by the Law Society reporter. He noted that in his first response the Respondent referred to the lack of a witness signature being a "latent defect" but then later said he acted to "cure an informality". He asked the Respondent about these differences. The Respondent said he found

it difficult to justify these “slightly different explanations”. He said that he did not fully appreciate he was doing anything wrong. The witness had, after all, verified the signatures with the clients, although by failing to sign at the time, she had not complied with the 1995 Act. The witness confirmed that it was correct that after 42 years in the profession, he did not know how to remedy the situation properly.

The Tribunal asked some questions. The Respondent explained that when he realised the will was not signed, he thought “Oh Christ, [the secretary] has failed to sign”. He thought about the potential consequences. He spoke to the secretary to try and work out what happened. In answer to another question, he said that he had no cause to look at the will following the testator’s death because he was not engaged to deal with the executry. He understood that there was no estate to be administered once the funeral account had been paid. The Respondent said he explained the situation to the executrix over the phone when she asked for a certified copy of the will. The Respondent was aware of the family dispute but this did not have a bearing on the decision.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the Complaint was in two parts. The first related to a failure to act with competence and diligence and concerned an omission. The second related to a failure to act with honesty and integrity and concerned the correction.

The Fiscal referred the Tribunal to paragraph 1.17 of Paterson and Ritchie’s “Law, Practice and Conduct for Solicitors” and submitted that it was the Respondent’s responsibility to ensure that the will was correct. He quoted the terms of Rule B1.10.

The Fiscal invited the Tribunal to treat the Respondent’s evidence with scepticism. He said it was not credible that the Respondent did not know how to set up a will. There was no explanation as to why the Respondent had not sought guidance from colleagues or the Society. There were incentives for him to take a short cut. Rectification would incur cost and effort to his firm. It was unlikely that the matter would be discovered. The Fiscal noted that the Respondent was concerned on discovering the error and that sat awkwardly with the Respondent’s current position that he had done nothing wrong.

The Fiscal referred the Tribunal to Rule B1.2 and the test for dishonesty in Ivey-v-Genting Casinos (UK) Ltd [2017] UKSC 67. He quoted the test for misconduct contained in Sharp-v- Law Society of Scotland 1984 SLT 313 and submitted that the Respondent’s behaviour was a serious and reprehensible departure from the standards of competent and reputable solicitors. He noted that the public places reliance upon

certified copy documents. In his submission, the Respondent's conduct was apt to draw the profession into disrepute and a finding of professional misconduct was very much merited, singly and *in cumulo*.

In answer to questions from the Tribunal, the Fiscal said that the actual state of the Respondent's knowledge could be inferred from his initial reactions and the motivations for his conduct. The Fiscal referred to the Respondent's description of the error as a "latent defect" and then an "informality". He said this demonstrated that the Respondent was aware of the seriousness of the situation and how to remedy it but was trying to explain it away. The Fiscal confirmed that the Secondary Complainer wished to make a claim for compensation.

SUBMISSIONS FOR THE RESPONDENT

Mr Clark referred the Tribunal to Law Society of Scotland-v-Bruce de Wert at pages 25 and 26. Mistakes, carelessness and negligence are not necessarily professional misconduct. All behaviour is subject to the "Sharp test". Mr Clark said that the Respondent admitted that he did not check the enclosures when the copy wills were sent to the clients. However, this error could happen even to competent and reputable solicitors. He urged the Tribunal to consider the averments of misconduct separately. Events five years later could not turn the first incident into professional misconduct or even unsatisfactory professional conduct. With regard to the second averment of misconduct, which included an allegation of dishonesty, Mr Clark noted that the Reporter had concluded that the Respondent had not been dishonest. Mr Clark referred the Tribunal to an analogous case from 2019 on the Law Society website which had only resulted in a finding of unsatisfactory professional conduct. The Respondent admitted that certifying the document as a true copy lacked integrity but denied that this met the threshold for professional misconduct.

In answer to questions from the Tribunal, Mr Clark said that a competent and reputable solicitor would know the law. However, on the basis of the analogous unsatisfactory professional conduct finding, he said that the departure from standards was not serious and reprehensible.

DECISION

On the basis of the admitted facts and the Respondent's evidence, the Tribunal was satisfied that the Respondent acted in the manner detailed in the averments of fact set out in the Complaint as amended. A will was not signed by a witness, an employee supervised by the Respondent, at the time the testator verified his signature to her. Her signature was added to the will some years later, and the Respondent

certified that version as a true copy of the original. The Complainers alleged that this conduct breached Rules B1.10 and B1.2 of the Law Society of Scotland Practice Rules. The Respondent admitted breach of those rules, although he denied dishonesty and professional misconduct.

According to the definition of professional misconduct contained in Sharp v Council of the Law Society of Scotland 1984 SLT 313,

“There are certain standards of conduct to be expected of competent and reputable solicitors. A departure from these standards which would be regarded by competent and reputable solicitors as serious and reprehensible may properly be categorised as professional misconduct. Whether or not the conduct complained of is a breach of rules or some other actings or omissions, the same question falls to be asked and answered and in every case it will be essential to consider the whole circumstances and the degree of culpability which ought properly to be attached to the individual against whom the complaint is to be made.”

The Tribunal had regard to the test for dishonesty described in Ivey-v-Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. According to that case, the Tribunal should first ascertain subjectively the actual state of the individual’s knowledge or belief as to the facts. When that is established the question whether his conduct was honest or dishonest is determined by applying the objective standards of ordinary decent people.

According to Wingate & Evans-v-SRA and SRA v Malins [2018] EWCA Civ 366, integrity is a broader concept than dishonesty. In professional codes of conduct the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. Integrity connotes adherence to the ethical standards of one’s own profession and involves more than mere honesty.

The first averment of misconduct alleged that the attestation clause was not completed at the time the will was signed in 2014. The testing clause itself was completed. The problem was the lack of a witness signature. It was alleged that the Respondent had failed to act with competence and diligence. He admitted that he had failed to properly supervise his employee. The Tribunal had regard to the terms of Rule B1.10. It provides that solicitors must only act in those matters where they are competent to do so. They must only accept instructions where the matter can be carried out adequately and completely within a reasonable time. They must exercise the level of skill appropriate to the matter.

The Tribunal did not consider that this single error in supervision breached Rule B1.2, or that it constituted a serious and reprehensible departure from the standards of competent and reputable solicitors. It therefore found the Respondent not guilty of professional misconduct. It considered whether the behaviour may constitute unsatisfactory professional conduct but was of the view that such a mistake could be made by a competent and reputable solicitor. Therefore, it declined to remit the matter to the Complainers under section 53ZA of the Solicitors (Scotland) Act 1980.

The second averment of misconduct alleged that the Respondent had failed to act with honesty and integrity when he certified as a true copy of the will, a version which had been signed by the witness, when the original will had not been so signed. The Respondent admitted that he had failed to act with integrity under explanation that he believed the certified copy was a true copy of the will and that this had been done without intention to deceive. Solicitors must be trustworthy and act honestly at all times so that their personal integrity is beyond question. In particular, they must not behave, whether in a professional capacity or otherwise, in a way which is fraudulent or deceitful (Rule B1.2).

The Tribunal considered the actual state of the Respondent's knowledge or belief as to the facts. It found him to be a credible and reliable witness. The Tribunal believed the Respondent when he said he was not familiar with the procedure for setting up a will and was merely attempting to cure the difficulty which had arisen. It noted that the Respondent had explained the situation to the executrix. In these circumstances, the Tribunal did not consider that the Respondent had acted dishonestly. However, it did consider that the Respondent had allowed his integrity to be called into question. Certified copy documents are relied upon in all manner of situations to be true copies of the originals. It is imperative that solicitors take meticulous care to ensure that documents they certify are in fact true copies. Failure to do so can have very serious consequences and is likely to bring the profession into disrepute. There is an established procedure for setting up a will in circumstances such as this, and the Respondent ought to have taken time to research the options before attempting to resolve the problem informally by certifying a document which he knew was not a true copy of the original. By his own evidence, he was aware of the significance of the absence of the witness's signature. The Respondent's conduct was a serious and reprehensible departure from the standards of competent and reputable solicitors. He was therefore guilty of professional misconduct in relation to this charge.

SUBMISSIONS ON SANCTION, PUBLICITY AND EXPENSES


The Fiscal indicated that there were no previous conduct findings on the Respondent's record card. He moved for the usual order regarding publicity. He confirmed that the Secondary Complainer had no submissions to make regarding publicity. He moved for expenses.

Mr Clark said that the Respondent very much regretted what had arisen. He had cooperated with the Tribunal. He was contrite. He understood what had gone wrong. It was embarrassing for him and his firm. He was in a position to pay a fine. Mr Clark highlighted that the Respondent had been found guilty of a single incident of misconduct. He was aware that publicity would be given to the decision. Expenses were a matter for the Tribunal, however, he wished the Tribunal to note that the Respondent had offered to plead guilty to this matter in February if dishonesty had been deleted from the Complaint. He submitted that the hearing had been unnecessary to the extent that it involved questions of dishonesty.

DECISION ON SANCTION, PUBLICITY AND EXPENSES

The Tribunal noted that there were no previous findings of unsatisfactory professional conduct or professional misconduct. It took account of the remorse expressed by Mr Clark on behalf of the Respondent. The conduct related to a single event. There was no obvious damage to the public, although the conduct was likely to affect the reputation of the profession. The Respondent appeared to have some insight into his conduct. The Respondent had provided a joint minute and had cooperated with the Law Society and the Tribunal. The Tribunal did not consider that a restriction on the Respondent's practising certificate was necessary.

Taking all those circumstances into account, the Tribunal censured the Respondent and fined him £1,000. Given the mixed degree of success, and the offer previously made by the Respondent in February, the Tribunal found the Respondent liable for 66% of the expenses of the Complainers and of the Tribunal. The Tribunal was persuaded that if it had not been for the question of dishonesty, the process for the hearing and the hearing itself could have been more streamlined. It directed that publicity would be given to the decision. That publicity would include the name of the Respondent and the Secondary Complainer but need not identify anyone else. The Secondary Complainer will have 28 days from the date of intimation of these written findings to lodge a claim for compensation with the Tribunal.


Chris Mackay
Acting Vice Chair