

**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, Atria One, 144 Morrison Street,
Edinburgh**

Complainers

against

**IAN WILLIAM DONALDSON, 26 Viewfield
Terrace, Dunfermline**

Respondent

1. A Complaint dated 7 February 2019 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") averring that Ian William Donaldson, 26 Viewfield Terrace, Dunfermline (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There were three Secondary Complainers. Only the Third Secondary Complainer, RT, was said to be claiming compensation.
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 fixed a procedural hearing for 2 April 2019 and notice thereof was duly served on the Respondent.
5. At the procedural hearing on 2 April 2019, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented himself. The Tribunal granted the parties' joint motion to fix a hearing. A hearing was therefore set down for 24 June 2019. Notice thereof was duly served upon the Respondent.

6. At the hearing on 24 June 2019, the Complainers were represented by their Fiscal, Paul Marshall, Solicitor, Edinburgh. The Respondent was present and represented himself. Two signed Joint Minutes of Admissions were lodged. The Tribunal allowed the Respondent to withdraw his Answers. No evidence was led.

7. The Tribunal found the following facts established:-
 - 7.1 The Respondent is Ian William Donaldson. His date of birth is 6 December 1947. He was enrolled as a solicitor on 22 January 1973 and is the sole partner in the firm of Gorrie & Davidson, 26 Viewfield Terrace, Dunfermline. He held that position at the time of the events narrated.
 - 7.2 The Respondent's client was named MT. She died on 29 November 2010.
 - 7.3 The late MT owned a commercial property (the "Manx Property"). Under the terms of the late MT's will, a one-half share of the Manx Property was bequeathed to her niece TT ("the first Secondary Complainer"). The other half share of the Manx Property was bequeathed to a trust (the "Trust"). Company 1 acts as the trustee of the Trust. The client services director of Company 1 is Mr PC ("the second Secondary Complainer"). He complained on behalf of the Trust. The late MT's son, RT, ("the third Secondary Complainer"), is the beneficiary of the Trust.
 - 7.4 On 29 September 2011, an application was lodged with Dunfermline Sheriff Court to appoint the Respondent and a family friend of the late MT named AJ as co-executors. They were confirmed on 17 November 2011.
 - 7.5 Manx probate was necessary in order to transfer the title of the Manx Property. Manx probate serves the same function as confirmation in Scotland; it allows the deceased's estate to be divided and transferred as necessary. Isle of Man agents were therefore required to deal with the application. On 24 August 2012 the Respondent wrote to the first Secondary Complainer advising that he had instructed the transfer of the Manx Property into the names of the first Secondary Complainer and the Trust. On 6 March 2013 the Respondent indicated that he hoped that settlement of the Manx Property would be complete within the next month. On 21 October 2013, the first Secondary Complainer's agent wrote to her

explaining that he had spoken to the Respondent and that the Respondent had confirmed that the estate would definitely be finalised by the end of November 2013. He reported that the Respondent had also said that he was proceeding with the transfer of title and that he had instructed solicitors on the Isle of Man. The first Secondary Complainer's agent wrote to her again on 9 November 2013 to confirm that the Respondent had explained that he had instructed Isle of Man solicitors.

- 7.6 The Respondent wrote to a contact, CG, on the Isle of Man on 21 November 2013 stating *"I did write to you some time ago asking if you would recommend a firm of lawyers on the Island to arrange the transfer of the Title which I understand has to be done at a local level any appropriate firm would suffice."* CG responded and recommended Lawrence Keenan Advocates (the "Manx Agents"). On 3 December 2013 the Respondent contacted the third Secondary Complainer and advised that *"the documents in regard to the transfer of the Isle of Man property had been instructed you will appreciate that you have to engage agents in the Island to carry out this work and we have supplied them with everything that we understand is required. We shall endeavour to obtain a timescale for you. Probate is in fact also finalised and only the transfer of the Isle of Man property is required to wind up the estate."*
- 7.7 On 6 December 2013 the first Secondary Complainer's agent forwarded to her an email received from the Respondent which confirmed that he had instructed agents on the Isle of Man to transfer the Manx Property to the beneficiaries.
- 7.8 The Respondent sought to engage with the Manx Agents on 16 December 2013. They responded on 18 December 2013 requesting the return of their signed terms of business letter and Money Laundering identification documentation for both executors. The Respondent responded on 16 April 2014 with the Money Laundering documentation in respect of himself and promising Money Laundering documentation on behalf of AJ. A letter of engagement was sent by the Manx Agents on 24 April 2014 along with a request for further Money Laundering identification. A chasing letter was sent on 26 June 2014 and the Respondent provided the necessary information on 30 June 2014. On 4 July 2014 the Manx Agents requested a payment to account for the probate fee and then sent

a reminder seeking that payment on 26 September 2014. Shortly thereafter, the fee was paid.

7.9 The Respondent signed the probate application on 30 January 2015. Probate was granted on 10 March 2015. The Manx Agents wrote to the Respondent on 12 March 2015 to confirm that the application had been lodged and again on 24 March 2015 enclosing the grant of probate. On 15 April 2015 the Manx Agents wrote to the Respondent again enclosing a further corrected version of the draft Vesting assent, which was a document required for the interest in the Manx property to be conveyed.

7.10 The Respondent resigned as executor on 14 December 2016 before the executry had been completed.

8. Having considered the foregoing circumstances and having heard submissions from the parties, the Tribunal found the Respondent guilty of Professional Misconduct in respect of his failure:-

- (a) to act with trust and personal integrity (Rule B1.2 of the 2011 Practice Rules);
- (b) to communicate effectively (Rule B1.9.1 of the 2011 Practice Rules);
- (c) to act with competence, diligence and appropriate skill (Rule B1.10 of the 2011 Practice Rules); and
- (d) to act in a manner consistent with persons having mutual trust and confidence in each other (Rule B1.14 of the 2011 Practice Rules).

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

Edinburgh 24 June 2019. The Tribunal having considered the Complaint dated 7 February 2019 at the instance of the Council of the Law Society of Scotland against Ian William Donaldson, 26 Viewfield Terrace, Dunfermline; Find the Respondent guilty of professional misconduct in respect of his failures (a) to act with trust and personal integrity, (b) to communicate effectively, (c) to act with competence, diligence and appropriate skill and (d) to act in a manner consistent with persons having mutual trust and confidence in each other; Censure the Respondent; Fine him in the sum of £2,000

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; Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent but need not identify any other person; 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)

Kenneth Paterson

Vice Chair

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 *18 July 2019.*

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

At the hearing on 24 June 2019, the Tribunal had before it the Complaint, an Inventory of Productions for the Complainers and two signed Joint Minutes. Said Joint Minutes agreed the averments of fact and duty in the Complaint.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal invited the Tribunal to find the Respondent guilty of professional misconduct using the test for professional misconduct in Sharp v The Law Society of Scotland 1984 SLT 313. He noted that the key elements of professional misconduct related to a property on the Isle of Man. It was to be transferred to two beneficiaries under MT's will. There were two elements to the misconduct. Firstly, misleading communication was sent to various persons relating to the progress on the transfer of the Isle of Man property. Secondly, the Respondent failed to progress the transfer within a reasonable period.

In relation to the first issue, with reference to the Complaint and Productions, the Fiscal described how on five separate occasions the Respondent communicated that he had instructed local solicitors to carry out the transfer of the Isle of Man property. He made these claims to the First Secondary Complainer, her agent and the Third Secondary Complainer. These communications took place in the 16-month period between 24 August 2012 and 6 December 2013. The Respondent did not actually instruct Manx agents until 16 December 2013. The Fiscal submitted that this breached the Respondent's duties in terms of Rules B1.2, B1.9.1 and B1.14 of the 2011 Practice Rules.

In relation to the second issue, the Fiscal submitted that the Respondent failed to implement the transfer of the Isle of Man property within a reasonable time. MT died on 29 November 2010. Between 17 November 2011 when the Respondent and AJ were confirmed as executors, and 16 December 2013 when the Isle of Man agents were instructed, the Respondent did not issue any instructions. Even once instructions were issued the Manx solicitors in December 2013, the Respondent failed to progress matters and the transfer was delayed until 30 January 2015. This was due to the Respondent's delay in sending documents and a deposit required by the Manx agents. The Fiscal submitted this was a breach of Rule B1.10 of the 2011 Practice Rules.

In support of his submission that the conduct narrated in the Complaint constituted professional misconduct in terms of the Sharp test, the Fiscal referred the Tribunal to the Law Society of Scotland-v-Alexander Morrison, Law Society of Scotland-v-Donald Murray, Law Society of Scotland-v-William

Rennie and Law Society of Scotland-v-Mark Stalker. These involved delays and some concerned the misleading of clients or others. Professional misconduct was established in all four cases. The Fiscal submitted that the present case constituted professional misconduct because the Respondent made repeated misleading assertions and delayed resolving the matter for a significant period.

The Fiscal noted that the Respondent had withdrawn his Answers. These had contained an explanation for his conduct but following input from the Third Secondary Complainer the Respondent had signed the Second Joint Minute which reflected the agreed position of the parties. However, the Respondent did not accept that these facts amounted to professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

The Respondent tendered his apologies to the Tribunal and all concerned in the case. He said he was very very sorry for what had happened. The case had been hanging over him for five years to the detriment of his physical and mental health. He wished to deal with the case and give an explanation to the Tribunal. However, he had not seen the files for many years.

MT was a long-standing client of the Respondent's firm from 1970 onwards. She was a lady of substantial means. She owned a property on the Isle of Man tenanted by a department store which had an impressive rent. The property was willed to TT and the Trust. The Respondent and MT's friend and bank manager, AJ, were the executors.

MT died in November 2010. From the beginning, RT made things difficult. He did not cooperate with the executors and removed property from MT's house. The Respondent started on the executry in Spring 2011. Its value was over one million pounds. The Respondent has dealt with estates of this size before. The Respondent prepared the inventory and paid inheritance tax. Relations with RT broke down and he made a complaint to the SLCC about the Respondent. No action was taken in respect of this complaint. Work continued on the executry.

Problems arose regarding the Isle of Man property. The tenant terminated the lease. It was difficult to get another tenant. In 2008, there was a financial crash. A series of short-term leases were agreed for a much reduced rent. The property "began to look like a poisoned chalice". The Respondent said he "got it into his mind", incorrectly, that he and the beneficiaries had doubts about the property at this stage. That is the explanation he offered in his Answers which had been withdrawn once he had been shown information to the contrary.

Turning to the letter of 24 August 2012, the Respondent said he must have thought something was being done about the transfer. He said the transfer had been organised. He could not explain the circumstances of the letter and wished he had the file to give the letter context. He accepted that the letter was written and signed by him. He would not have written the letter recklessly. He must have assumed that the Isle of Man transfer was ready to be executed. It is written on the basis that everything was organised and ready to go. He would not have written a pointless letter. He accepted that nothing seems to have been done following the letter of 24 August 2012. However, he notes that there is no evidence of protests by the beneficiaries or the other executor that no action was being taken. The Respondent's conclusion that "something happened" which put the instruction of the transfer on hold.

The Respondent noted that the entire estate was engathered in early course (2012/13). The period of delay related only to the Isle of Man property. However, despite this delay he was still able to advance a six-figure sum to TT to enable her to buy a house. All legacies were paid by Spring 2013. He said this to reassure the Tribunal that he was not "cocking a snook" at the beneficiaries.

The Respondent accepted that the delay was obviously his fault. He was worried about the Isle of Man property. It had no rental value, the financial crash created hostile conditions, and there was a list of dilapidations. The Respondent said he "dillied and dallied". He had no recollection of the conversation with TT's agent but accepted it occurred. He accepted all the facts in the Joint Minute. However, the inaccurate claims would not have taken place without a reason. He would never intentionally breach his personal integrity. He never meant to mislead anyone or act in a deceitful manner. The whole executry was carried out "perfectly". The only thing "left behind" was the Isle of Man property.

The Respondent described some of the difficulties he faced dealing with the case within a reasonable time. A series of documents produced for the vesting assent were incorrect and had to be prepared again. AJ, the other executor, moved to a rural farmhouse without a telephone line or email. All communication had to take place by letter. AJ's anti-money laundering documents were out of date because he had moved house. The Respondent submitted that the delay following instruction of the Isle of Man solicitors was not his fault.

The Respondent unreservedly apologised again. He accepted he had written letters he could not justify. However, he said he was trying to progress the executry. There were tensions between the beneficiaries and the agents involved. He wholly regretted the situation.

A Tribunal member noted that the Respondent did not consider these letters constituted professional misconduct and asked the Respondent to address this. The Respondent said that he did not write anything he did not think was justified at the time. He accepted that in the letter of 24 August 2012 he had written “I have now instructed”. He submitted that he should have written “We are now instructing” and accepted that he had to bear responsibility for his “poor phraseology”. At the time he anticipated that he would have instructed the Manx agents within days. It was the Respondent’s view that in order to find him guilty of professional misconduct the Tribunal would have to establish that he had acted recklessly.

DECISION

The Tribunal proceeded on the basis of the facts agreed by the parties in the two Joint Minutes of Admissions. The Tribunal was therefore satisfied beyond reasonable doubt that the Respondent had acted in the manner set out in the Complaint. According to the test as set out within Sharp v The Law Society of Scotland 1984 SLT 313, there are certain standards of conduct to be expected of competent and reputable solicitors and 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.

The Respondent repeatedly and unequivocally asserted to the First and Third Secondary Complainers and the agent for the First Secondary Complainer that he had instructed agents to deal with the title to the property on the Isle of Man when he had not done so. He unreasonably delayed in dealing with the transfer of title to that property. He therefore breached Rules B1.2, B1.9.1, B1.10 and B1.14 of the 2011 Practice Rules.

The Tribunal had regard to the professional misconduct cases highlighted by the Fiscal. It also noted the cases referred to in Paterson & Ritchie’s “Law, Practice and Conduct for Solicitors” at paragraphs 1.24 and 13.03. Where a client or a professional colleague is knowingly and deliberately deceived by a solicitor, this will generally amount to misconduct. The Respondent knew in August 2012 that he had not instructed solicitors on the Isle of Man. His assertions in this regard (until solicitors were instructed in December 2013) were therefore knowingly and intentionally misleading and demonstrated a lack of personal integrity. The principles of honesty and integrity are fundamental to the profession. Solicitors occupy a privileged position. The public and colleagues must be able to trust a solicitor’s word.

The Tribunal accepted that the delay in dealing with the Isle of Man property was due to various factors which included difficulties in obtaining client identification for anti-money laundering purposes and problems related to the various personalities involved in the executry. However, it was the Respondent's responsibility to ensure the executry was completed within a reasonable time and his failure to advance matters contributed to a significant degree to the delay.

It is essential that solicitors act with trust and personal integrity. They should communicate effectively. They should act with competence, diligence and skill. They should also act in a manner consistent with persons having mutual trust and confidence in each other. Failure to do so brings the profession into disrepute. The Respondent failed in these duties and these failures were a serious and reprehensible departure from the standards of competent and reputable solicitors. Therefore, the Respondent was guilty of professional misconduct.

SUBMISSIONS IN MITIGATION

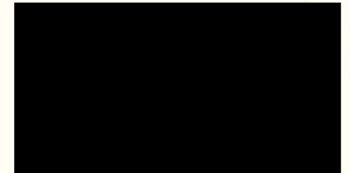
The Respondent said he respected the Tribunal's decision. He said he was "horrified" to hear the Fiscal's narration. He admitted he had "taken his eye off the ball". The Respondent noted that he was 71 years old and was working on a retirement programme which he hoped would not be disturbed. He said that if anything happened to him his staff would be out of work. The rest of the executry was completed competently. The only aspect of the large estate which went awry was the Isle of Man property. No fees were paid to the Respondent for this work. The "goof" had been expensive for the firm. The Respondent is currently dealing with many executries. He is greatly experienced in executry work and continues to work in this area. He has been a member of the Law Society for 46 years and has never been in any trouble.

DECISION ON SANCTION, EXPENSES AND PUBLICITY

The Tribunal noted the Respondent's remorse, apologies and his acceptance that he had acted wrongly in this case, although full insight did not appear to have arisen until the date of the Tribunal hearing. The Respondent entered into a Joint Minute and attended the hearing himself. The Tribunal took account of the Respondent's unblemished 46-year career and the fact that the professional misconduct was related to a single aspect of a large executry which was otherwise completed competently. However, the Tribunal also noted the Respondent had misled others on five occasions and had delayed in dealing with the matter for a long time. The Tribunal considered that Censure alone would be insufficient to mark the seriousness of the offending which concerned a lack of integrity. The Tribunal was satisfied that the

Respondent was not an ongoing risk to the public and that a restriction of his practising certificate was not required for public protection. The Respondent is an experienced executry practitioner coming to the end of his career. His appearance before the Tribunal and the financial consequences of his misconduct will be a salutary lesson to him to consider carefully the terms of his correspondence. The appropriate sanction was therefore a Censure and a Fine of £2,000.

Following submissions on expenses and publicity, the Tribunal decided that the appropriate award of expenses was one in favour of the Complainers. The Tribunal ordered that publicity should be given to the decision and that publicity should include the name of the Respondent. However, there was no requirement to identify any other person as publication of their personal data may damage or be likely to damage their interests. The Tribunal allowed the Secondary Complainer 28 days from the date of intimation of these findings to lodge a written claim for compensation with the Tribunal Office.



Kenneth Paterson
Vice Chair