

**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

**NATALIE JOAN BIRD, The Hook, Portskerra,
Melvich, Thurso**

Respondent

1. A Complaint dated 12 September 2023 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 Natalie Joan Bird, The Hook, Portskerra, Melvich, Thurso (hereinafter referred to as "the Respondent") was a practitioner who may have been guilty of professional misconduct.
2. There was a Secondary Complainer, Serena Sutherland, Dandhlaw Ltd, 7/9 Princes Street, Thurso.
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. A procedural hearing took place on 10 January 2024. The Complainers were represented by their Fiscal, Gavin Whyte, Solicitor, Edinburgh. The Respondent was present and represented by Johnston Clark, Solicitor, Dundee. A hearing was fixed for 20 March 2024, to take place in person. Notice thereof was duly served on the Respondent.
5. At the hearing in person on 20 March 2024, the Complainers were represented by their Fiscal, Gavin Whyte, Fiscal, Edinburgh. The Respondent was present and represented by Johnston

Clark, Solicitor, Dundee. Prior to the hearing, parties had lodged a Joint Minute whereby the Respondent admitted all the averments of fact, duty and misconduct in the Complaint of 12 September 2023.

6. Having given careful consideration to the terms of the Complaint and Joint Minute, the Tribunal found the following facts established:-

- 6.1 The Respondent is Natalie Joan Bird. She was born on 1 September 1977. She was enrolled and admitted as a Solicitor on 11 February 2016. The Respondent commenced employment with Dandhlaw Ltd on 29 February 2016. The Respondent became a Director of the firm on 01 May 2021 and left the firm on 22 June 2022. The Respondent does not currently possess a practising certificate.
- 6.2 The Respondent met with Mr X and his wife on 22 March 2022 in relation to the preparation of new wills and powers of attorney for both.
- 6.3 It came to the attention of the firm in May 2022 that the new will for Mr X had not been dated. The Respondent was informed of this and undertook to correct the matter by arranging a Zoom call with Mr X.
- 6.4 An activity summary on the firm's client file created by the Respondent on 1 June 2022 recorded a telephone call to Mr X in which the Respondent "*explained she had made an error when signing the will and apologised. She had arranged to re-sign over zoom.*"
- 6.5 A further activity summary on the firm's client file was created on 1 June 2022 by the Respondent for the attention of the firm's administrative staff which recorded: "*Letter to client enc Will for signing*". A copy letter on file dated 1 June 2022 sent by the Respondent to Mr X stated: "*Further to our telephone conversation, please find enclosed the original Will for signing at a zoom appointment with me.*"
- 6.6 On 3 June 2022, an activity summary was created on the firm's client file by the Respondent recording a Zoom meeting with Mr X. The file note stated: "*NB apologising for her previous error. Witnessed signing of new will*".

- 6.7 A further activity summary dated 8 June 2022 was created on the firm's client file by the Respondent which recorded that an attachment was enclosed, and the description was: "*[Mr X] signed Will*". The copy will on file was in identical terms to the previous copy with the exact same signatures and witness details but with the addition of the date of "27-04-22" on the testing clause of the will.
- 6.8 It later transpired that Mr X had no contact with the Respondent since the undated will was signed in April 2022.
- 6.9 The file notes recorded in June 2022 by the Respondent were false. The Respondent did not contact Mr X to arrange resigning of the will, nor did she witness any signing by him after April 2022. The copy will on file was entirely falsified by the Respondent.
7. Having considered the foregoing circumstances, the Tribunal found the Respondent guilty of professional misconduct in respect of her failure to act with honesty and integrity when:
- 7.1 On or around 1 June 2022 she completed a file note describing a telephone call to Mr X saying "*NB explained she had made an error when signing the will and apologised. Arranged to re-sign over zoom*", or words to that effect, when this was not the case;
- 7.2 On or around 3 June 2022 she completed a file note describing a Zoom meeting with Mr X stating "*NB apologising for her previous error. Witnesses signing of new will*", or words to that effect, when this was not the case;
- 7.3 On or around 8 June 2022 she completed a file note advising Mr X had signed the will when this was not the case;
- 7.4 Between 1 June 2022 and 8 June 2022 she falsified Mr X's signature on the last page of his will;
- 7.5 Between 1 June 2022 and 8 June 2022 she provided a written declaration that she had witnessed Mr X re-sign the will; and

7.6 Between 1 June 2022 and 8 June 2022 she sought to conceal that she had falsified Mr X's signature by dating the testing clause 27 April 2022 rather than on 3 June 2022 when the will was allegedly re-signed by Mr X.

8. Having heard the Respondent and her Solicitor in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh, 20 March 2024. The Tribunal having considered the Complaint dated 12 September 2023 at the instance of the Council of the Law Society of Scotland, Atria One, 144 Morrison Street, Edinburgh against Natalie Joan Bird, The Hook, Portskerra, Melvich, Thurso; Find the Respondent guilty of professional misconduct in respect of her breach of Rule B1.2 of the Law Society of Scotland Practice Rules 2011; Order that the name of the Respondent be Struck Off the Roll of Solicitors in Scotland; 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 but need not identify any other person.

(signed)

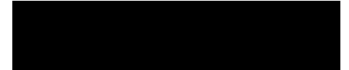
Kenneth Paterson

Vice Chair

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

10 APRIL 2024.

IN THE NAME OF THE TRIBUNAL



Kenneth Paterson

Vice Chair

NOTE

At the Hearing on 20 March 2024, the Tribunal had before it the Complaint, a Joint Minute, a psychiatric report, a copy of the will in question, and a list of authorities for the Respondent.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal noted that the Respondent admitted all the averments of professional misconduct contained in the Complaint. The Respondent had been tasked with composing wills and powers of attorneys for two clients, a husband and wife. In May 2022 it was noted that the husband's will was not dated. The Respondent undertook to deal with the matter. She created several entries on the client file giving the impression that the client had been made aware of the issue, there had been a Zoom call and the will had been signed and witnessed. These file notes were false. The Respondent had not met the client again. The firm discovered this, and an independent investigation was launched.

The Complainers alleged that the Respondent's conduct was contrary to Rule B1.2 of the Law Society of Scotland Practice Rules 2011. The Respondent accepted that she had acted fraudulently while acting in a professional capacity. However, it was for the Tribunal to apply the appropriate test and determine whether professional misconduct had occurred. The Fiscal noted that this one incident comprised of multiple instances of dishonest behaviour between 1 and 8 June 2022. In his submission these were serious and reprehensible and merited a finding of professional misconduct.

SUBMISSIONS FOR THE RESPONDENT

Mr Clark said that he had nothing to say at this stage of the proceedings. The Tribunal indicated that it would adjourn to consider the question of misconduct.

DECISION

On the basis of the admitted facts, the Tribunal was satisfied that the Respondent had acted in the manner set out in the Complaint. 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. The Respondent failed in these duties and breached Rule B1.2 of the Law Society of Scotland Practice Rules 2011. Although the Respondent admitted professional misconduct it remained for the Tribunal to determine that matter.

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.

The Tribunal was satisfied that the Respondent had acted dishonestly while acting in a professional capacity. She forged a client’s signature on the last page of his will and dated it 27 April 2022. She created three fictitious file notes to conceal the forgery. The principles of honesty and integrity are fundamental to the profession. Members of the profession are in a very privileged position and members of the public must be able to trust that a solicitor will carry out his/her duties and obligations in an honest and trustworthy manner. The importance of this principle and the seriousness of the breach of that principle has repeatedly been emphasised by this Tribunal. Membership of the profession is a privilege. Solicitors undertake a duty throughout their professional lives to conduct their client’s affairs to their utmost ability and with complete honesty and integrity. Clients and colleagues should be able to expect these qualities of every solicitor as a matter of course. The Respondent’s behaviour in this case was a serious and reprehensible departure from the standards of competent and reputable solicitors and accordingly professional misconduct was established.

SUBMISSIONS IN MITIGATION

Mr Clark referred to his written submission in mitigation. The written submission drew the Tribunal’s attention to the psychiatric report which had been lodged and the Tribunal’s decision in Law Society-v-

Platt (2023). The written submission also referred to SRA-v-Sharma [2010] EWHC 2022 and SRA-v-Imran [2015] EWHC 2572. Mr Clark noted in the written submission that save in exceptional circumstances, a finding of dishonesty will lead to a solicitor being struck off the roll. However, there is a small residual category where striking off would be disproportionate in the circumstances. In deciding whether or not a particular case falls into that category relevant factors include the nature, scope and extent of the dishonesty itself whether it was momentary or over a lengthy period of time, whether it was a benefit to the solicitor and whether it had an adverse effect on others. Focus should remain on the degree of culpability and the extent of the dishonesty. In Mr Clark's submission there was no benefit to the Respondent, nor could there have been. There was no loss to the client, and none is averred. The dishonesty occurred in relation to one document with one client over a relatively short period of a few days from the matter being raised on 31 May 2022 and the Respondent's regrettable actions thereafter. In Mr Clark's submission, this could be characterised as a momentary lapse of reason. It was certainly not over a lengthy period of time. He therefore submitted that the behaviour was at the lowest end of the spectrum of dishonesty. Mr Clark's written plea in mitigation drew attention to the psychiatrist's view on the question of future risk to the public and what could be achieved with appropriate supervision and support.

Mr Clark submitted in the written plea in mitigation that the Respondent did not seek to renew her practising certificate and did not intend to ever practice as a solicitor again. However, she did not want her legal career to end by being struck from the roll. She was contrite and had insight. She engaged with the complaints process and appeared personally at the Tribunal at some expense to be able to answer questions and express her own contrition.

Mr Clark's written plea in mitigation noted that if the Respondent sought to practise again after a period of suspension, she would have to pass the fitness test set by the Law Society. Conditions could be imposed. He suggested that suspension was the appropriate disposal to mark the disapproval of the Tribunal and protect the public while recognising the exceptional circumstances of this case. Such a disposal would not contravene the Tribunal's indicative sanctions guidance.

In his oral submission, Mr Clark said he was perplexed as to what had happened in this case. He noted the Tribunal's indicative sanctions guidance which said that strike off might be indicated where the solicitor had been involved in dishonesty "or other criminal behaviour". He submitted that the Respondent's behaviour was not criminal since forgery is not a crime until the document is uttered as genuine. He also drew the Tribunal's attention to the Law Society's website guidance regarding admission to the profession. The onus is on the applicant to demonstrate that they are a fit and proper

person. He said that he had nothing else to add but that the Respondent wished to address the Tribunal in mitigation.

EVIDENCE FOR THE RESPONDENT

The Respondent gave evidence on oath. She said that she wanted to say how sorry she was for what she did. This was not normal behaviour for her. She felt as though a “perfect storm” of events led to it. She could not see a way out. She had asked for help from her manager. She had attended mediation with staff. She was under pressure working in a branch office some distance away from the main office. At the time of the conduct, the Respondent was working there alone with one member of support staff. Clients would come into the office. She would witness them signing documents. She subsequently discovered that Mr X's will was signed but not dated. The file was on the corner of her desk. She had no time to contact the client. She thought it was important to tell the client the date was missing. However, she signed and dated the last page herself. There was no benefit to her. She left the firm voluntarily. She reported herself to the Law Society. She has not worked as a solicitor since then.

The Respondent was asked about her plans for the future. She said right now she did not intend to work as a solicitor again. However, she accepted the situation was raw and emotional. Long-term, she would like to return to the profession. She would want to work for a new firm. She could not return to her old one. She thought she might want to return in around two years' time. She had learned a lot about herself and how to mitigate things. She would “stick to the day job” and would not manage staff. However, it was important for her to have some time and breathing space. The complaints process had been ongoing for two years. She thinks about it every day, particularly when trying to sleep.

The Fiscal asked the Respondent about how the matter had come to light. The Respondent said she had experienced a particularly difficult meeting with a member of staff. She put a note on the file. She did not even consider the date. The date she used was a bank holiday. That is how the matter came to light.

Before the Tribunal began its deliberations on sanction, the Fiscal noted that the Complainers took no issue with the psychiatric report. There had been no loss to the client who bore no ill will towards the Respondent. The Respondent had cooperated with the Tribunal.

DECISION ON SANCTION

The Tribunal considered the Respondent's behaviour to be at the higher end of the scale of misconduct. She had admitted and been found guilty of dishonesty by forging a signature on a client's will. The dishonesty was further compounded by the repeated file entries attempting to conceal that dishonesty.

The Tribunal considered the aggravating and mitigating factors in the case. Aggravating factors were the finding of dishonesty, and the dangerous nature of the behaviour which was likely to seriously damage the legal profession. In mitigation, there were no previous findings of unsatisfactory professional conduct or professional misconduct against the Respondent. She had shown remorse and appeared to have some insight into the precipitating factors. She had engaged with the Tribunal and appeared in person. She had cooperated with the Fiscal and entered into a Joint Minute. She had been experiencing a stressful time at work leading up to the misconduct.

The normal penalty for dishonesty is strike off (Bolton-v-Law Society [1993] EWCA Civ 32) and this was uppermost in the Tribunal's mind. Mr Clark invited the Tribunal to find that this case was one of the small residual category of dishonesty cases where striking off would be disproportionate in the circumstances. According to the SRA-v-Sharma [2010] EWHC 2022, in deciding whether or not a particular case falls into that category, relevant factors include the nature, scope and extent of the dishonesty itself; whether it was momentary or over a lengthy period of time; whether it was of benefit to the solicitor; and whether it had an adverse effect on others.


Forgery of a client's signature is a serious dishonesty. Solicitors are in a privileged position of trust and they must act with the utmost propriety. Forging a client's signature would be an anathema to all right-thinking solicitors. The attempt to conceal the dishonesty with fictitious file entries widened the scope of the original dishonest act and compounded its serious nature. This was a factor which weighed heavily on the Tribunal's mind. The forgery might have taken place in a stressful moment. However, the Respondent did not destroy the forged document after she had applied the signature. Significant thought went behind the fabrication of the cover story. The Respondent took deliberate steps to conceal the misconduct and this was also dishonest. The dishonest behaviour did not continue for a lengthy period but neither was it momentary. In the Respondent's favour, the dishonesty was of no benefit to her and it appeared to have had no adverse effect on others. The Tribunal weighed all these factors carefully.

The Tribunal carefully considered the appropriate sanction in this case. The Tribunal's function is to protect the public and sustain public confidence in the integrity of the profession as well as discipline

individual solicitors. As was said in Bolton, the reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is part of the price. In all the circumstances, the appropriate penalty was one of strike off. The Tribunal had sympathy for the Respondent as an individual due to her personal circumstances at the time of the misconduct. However, it had no confidence that faced with another stressful working situation, the Respondent would not behave in the same way again. If she was allowed to practise at some time in the future, professional colleagues could have no confidence in her word. Considering public confidence and the maintenance of proper professional standards and conduct in a case involving such blatant dishonesty, the Tribunal was of the view that strike off was the only proper sanction to protect the public and maintain the reputation of the profession. The circumstances were not exceptional so as to prevent the imposition of the ultimate penalty. Any other sanction would be insufficient to mark the seriousness of the conduct, protect the public and maintain the reputation of the profession. The Tribunal therefore ordered that the name of the Respondent be struck off the roll of solicitors in Scotland.

DECISION ON EXPENSES AND PUBLICITY

The Tribunal invited submissions on expenses and publicity. The Fiscal moved for expenses and this motion was not opposed by the Respondent. Mr Clark invited the Tribunal to make an order that only the Respondent need be identified in the findings but no other third parties. The Tribunal found the Respondent liable in the expenses of the Complainers and of the Tribunal on the usual basis. It ordered that publicity should be given to the decision which names the Respondent, but no other person need be identified as publication of their personal data may damage or be likely to damage their interests. The Tribunal noted that the Secondary Complainer did not wish to claim compensation. Therefore, it made no direction regarding compensation.



Kenneth Paterson
Vice Chair