

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

D E C I S I O N

in Complaint

by

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

against

**THOMAS H. MURRAY,
Solicitor, formerly of 100 Pendeen
Road, Glasgow and now of
Canelecchia, Location 1,
Molazzama, Brucciano, Lucca,
5020, Italy**

Respondent

1. A Complaint dated 15 December 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") requesting that Thomas H Murray, Solicitor, formerly of 100 Pendeen Road, Glasgow and now of Canelecchia, Location 1, Molazzama, Brucciano, Lucca, 5020, Italy (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. Answers were lodged by the Respondent. Preliminary pleas were intimated by the Respondent.

3. Having considered the documentation lodged, the Tribunal resolved to set the Complaint down for a procedural hearing on 3 February 2009 and notice thereof was duly served on the Respondent.
4. The procedural hearing took place on 3 February 2009. The Complainers were represented by their Fiscal, Jim Reid, Solicitor, Glasgow. The Respondent was present and represented himself. A motion was made by the Respondent that that all proceedings in relation to this Complaint be heard in private. The motion was not opposed. The Tribunal agreed that all proceedings in relation to this Complaint be heard in private.
5. Having heard submissions by both parties on the preliminary pleas and having considered the productions lodged, the Tribunal dismissed all the preliminary pleas. The Tribunal Directed that written reasons be issued in due course and that a further procedural hearing should be fixed for 29 April 2009 and that the Complaint should be set down for a substantive hearing on a date to be later assigned. The Tribunal decided that the Respondent should be liable for the Complainer's expenses in relation to the debate on the preliminary pleas.
6. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 3 February 2009. The Tribunal having considered the Complaint dated 15 December 2008, at the instance of the Council of the Law Society against Thomas H Murray, Solicitor, formerly of 100 Pendeen Road, Glasgow and now of Canelecchia, Location 1, Molazzama, Brucciano, Lucca, 5020, Italy; Direct that all proceedings in relation to this Complaint be heard in private; Dismiss the Respondent's preliminary pleas; Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal in relation to this hearing as the same may be taxed by the auditor of the Court of Session on a Solicitor and client indemnity 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; Adjourn the Complaint to a further procedural hearing on 29 April 2009 and Direct that publicity be given to this decision and that this publicity should include the name of the Respondent but that such publicity should be deferred until the substantive hearing in relation to this Complaint and until further information is received regarding possible criminal proceedings connected with this matter.

(signed)

David Coull
Vice Chairman

7. A copy of the foregoing together with a copy of the Decision 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

A number of preliminary pleas were submitted on behalf of the Respondent and the case was set down for a debate on these preliminary pleas on 3 February 2009. The Respondent made a motion that all proceedings in relation to this Complaint be heard in private as the lay complainer in this case may be required to give evidence at the hearing and may also be involved in a criminal case arising out of the factual circumstances surrounding this Complaint. Mr Reid did not object to that motion. For the reasons advanced the Tribunal agreed that all proceedings in relation to this Complaint would be heard in private.

The Tribunal noted that the Respondent wished to make submissions regarding nine preliminary pleas. The Tribunal decided that Mr Reid should be asked to respond to each plea in turn.

After the Tribunal issued its decision on the preliminary pleas further submissions were made regarding procedural matters in connection with this Complaint.

The Respondent stated that he wished to raise one general matter regarding the correspondence which he had been sent by the Clerk to the Tribunal. He stated that he had had inadequate time to prepare his defence regarding this matter as the correspondence was dated 15 December 2008 but was not received by him until 31 December 2008 as it had been served at an address abroad. He advised that this delay meant that he had only been allowed one working day in which to lodge defences. He submitted that given that the Fiscal and the Law Society had the address at which he lives in Italy that the time for responding to the correspondence should have been extended in line with what is done by courts where people are living abroad.

In response to a question from the Tribunal the Respondent indicated that he had been given additional time but worried that this might occur again in the future.

Mr Reid indicated that full defences should be lodged and they should be more than a simple denial of the averments in the Complaint. Mr Reid stated that some of what is

contained in the Answers had been contradicted by the submissions made by the Respondent during the debate.

The Chairman advised both parties that their points had been noted. In answer to a question from the Chairman the Respondent advised that he was agreeable to documentation being sent to him via e mail as he is living in Italy and confirmed that he would confirm receipt of all documentation sent to him by this method.

The Chairman then referred the Respondent to his letter of 3 January 2009 sent to the Tribunal which indicated that in order to properly prepare his defence he required sight of a file which was in the possession of the lay complainer. The Respondent advised that he still required sight of that file.

Mr Reid suggested that the Respondent would require to apply to the Sheriff Court for an order that the file be produced.

The Respondent indicated that he was unaware of the procedure for this but would research the law and make the necessary application.

The Tribunal fixed a further procedural hearing for 29 April 2009 to check on the progress of this application. The Tribunal indicated that the substantive hearing in this case would be fixed for a date in early June.

SUBMISSIONS FOR THE RESPONDENT RE THE FIRST PRELIMINARY PLEA

The Respondent outlined the background of the Complaint. He stated that it was a Complaint by a Mr A to the Law Society, submitted at the end of a business relationship which Mr A believed went wrong. Mr A complained that the Respondent had embezzled around £18,000 and that he had also lied about the whereabouts of other monies. The Respondent stated that at the time that this was alleged he himself was sequestered and had had his practising certificate suspended. The matter was referred to the Law Society's Client Relations Committee and a finding of inadequate professional service was made against the Respondent. The Respondent stated that

further submissions were made to Client Relations Committee “J” regarding professional misconduct and the findings of that Committee have resulted in this Complaint coming before the Tribunal. In addition, the Respondent stated that Mr A made a complaint to Central Scotland Police regarding alleged embezzlement. The Respondent was arrested and charged with embezzlement and attempted embezzlement. In October 2007 the Procurator Fiscal at Stirling submitted a report to the Crown Office who determined that no further proceedings should be taken.

The Respondent then outlined his first preliminary plea. He submitted that the Complaint should be dismissed because criminal proceedings have already taken place and a decision was made to take no further proceedings. He referred the Tribunal to Articles 2.7 and 2.8 of the Complaint which contain averments of fact averring a course of behaviour on his part. He stated that the same allegation is repeated at Articles 3.3 and 4.2(c) and (d). The Respondent stated that these averments are matters in relation to which he has already faced criminal proceedings. He stated that the Crown Office reached the view that no further proceedings were to be taken against him. The Respondent submitted that the criminal investigation was a more thorough investigation than that conducted by the Disciplinary Committee and the Client Relations Committee of the Law Society who investigated this matter. The Respondent stated that evidence of the Procurator Fiscal’s decision is contained at pages 2(a)(i) and 2(a)(ii) of the Respondent’s Inventory of Productions.

The Respondent indicated that this information was conveyed to the Law Society by Mr Burns who was a solicitor acting for him at that time. The Respondent referred the Tribunal to pages 2(b)(ii) to 2(b)(vii) of the said Inventory which is a letter from Mr Burns to the Client Relations Office of the Law Society. The Respondent referred to the second paragraph of that letter where Mr Burns states that there is no substance to the allegation against the Respondent. The Respondent referred the Tribunal to page 2(c)(i) of the said Inventory, a letter to the Procurator Fiscal from Mr Burns referring to a statement taken from Mrs B. It states in the second paragraph of that letter -

“In particular we have spoken at length to Mrs B at the Law Society of Scotland. We enclose, on a confidential basis to the Crown, a copy of the

precognition that our Mr Burns has taken of her. Her position is that she cannot see any basis to substantiate the allegation contained in the petition.

You will see from her precognition that the funds received by (the Respondent) were duly entered in his firm's books, properly accounted for in terms of fees and VAT, and a balance of £10,000 paid to him. The residual sum of £2231.78 was properly standing to the account of Mr A at the point where the Law Society of Scotland took over custody of the practice on behalf of the Trustee."

The Respondent indicated that Mrs B's statement was an important and vital piece of evidence in his defence which the Committee did not take into account when deciding to refer the matter to their Fiscal. The Respondent stated that Mrs B is an employee of the Law Society and was charged with looking into the financial status of his firm.

The Respondent referred the Tribunal to the judgement of Sheriff Cubie of Stirling Sheriff Court dated 4 October 2007 at pages 3 (i) to 3(viii) of the said Inventory. The Respondent stated that this judgement related to an appeal by Mr A from the decision of the Respondent's Trustee not to make any further payments to Mr A from the Respondent's estate. The Respondent stated that by this stage Mr A had received all sums due to him. The Respondent stated that Sheriff Cubie reached this decision after hearing evidence on the matter. The Respondent asked the Tribunal to take particular note of the comments made by Sheriff Cubie at paragraph 5 of page 3(ii) of the said Inventory, where Mr A had explained to the court that he still claimed that money was due when the money was paid -

"Mr A then addressed me on the fact that (the Respondent) had not told him that he had been sequestrated, which was only discovered in February 2004. He instructed solicitors and by letter dated 22nd March 2004 (Respondent's Production No 2 and No 187 of his Productions) they wrote to the then Interim Trustee, Mr C, setting out a basis of the claim. Mr A advised me that he had been told that his claim could not be amended once it had been made."

The Respondent then referred the Tribunal to a further passage in Sheriff Cubie's judgement at paragraph 9 of page 3(iii) of the said Inventory -

“His claim was made up of a sum of money that had been received by (the Respondent) together with interest over the period until the claim was submitted under deduction of the £10,000.00 which had been paid to him as an interest free loan but which he was now prepared to accept could be treated as a payment to account.”

The Respondent submitted that the whole basis of Mr A’s complaint to the Law Society was that the £10,000 was an interest free loan and not a payment to account and that this concession in the course of the civil court proceedings is a complete turnaround from what he previously put forward in his complaint which led to these proceedings. The Respondent asked the Tribunal to consider where that change of evidence leaves Mr A’s evidence.

In response to a question from the Chairman, the Respondent accepted that the issue of the credibility of a witness is an evidential matter. He agreed to confine his remarks to his preliminary points. The Respondent submitted that as the standard of proof before the Tribunal is also beyond reasonable doubt, the matter has been tested by other courts and it has been found that there were to be no other proceedings.

SUBMISSIONS FOR THE COMPLAINERS RE THE FIRST PRELIMINARY PLEA

Mr Reid submitted that at its most fundamental criminal proceedings are not a bar to professional conduct proceedings. He stated that in this case the criminal case did not get as far as a court and the evidence was never tested. However, he submitted that this is largely irrelevant as the Complaint does not allege that the Respondent is guilty of embezzlement. In addition, Mr Reid submitted that under the Civil Evidence (Scotland) Act 1988 the Tribunal can take into account hearsay and uncorroborated evidence. Mr Reid submitted that there is no merit to this preliminary plea.

SUBMISSIONS FOR THE RESPONDENT RE THE SECOND AND FOURTH PRELIMINARY PLEAS

In relation to the second preliminary plea the Respondent stated that Mr A, the person who instigated the Complaint against him and who is in all probability likely to be the main witness against him, is himself the subject of a criminal investigation. That investigation has arisen in relation to allegations which he made against the Respondent and also in relation to a fraudulent claim which Mr A made upon the Respondent's sequestrated estate. The Respondent stated that these matters are currently the subject of a report to the Procurator Fiscal from Central Scotland Police. The Respondent submitted that it would be inappropriate for the Complainers to proceed when there are possible criminal proceedings outstanding against Mr A. The Respondent stated that he was advised by the Clerk to the Tribunal that neither the Complainers nor Mr Reid had any knowledge of any such proceedings.

The Respondent referred the Tribunal to page 5(a)(i) of the said Inventory. He referred to paragraph 3 of that page, a letter dated 23 February 2008 from himself to the Law Society of Scotland. Paragraph 3 of that letter states -

“It is noted from the Committee Deliberations, Issue 3 (first paragraph final sentence), that I had invited the Committee to find that the Complainer was neither credible or reliable. In addition at issues 5 and 6 (second paragraph first sentence), reference is made to the Complainers signed Affidavit. I shall be pleased to learn what, if any, consideration was given to the fact that the Complainer is presently the subject of a Police investigation in respect of his having made false allegations against Mr Murray and in respect of fraud and attempted fraud.”

The Respondent submitted that that letter shows that the Complainers had knowledge of the criminal proceedings against Mr A prior to these proceedings being brought.

The Respondent then referred the Tribunal to pages 1(a) to 1(d) of the said Inventory and stated that these documents all support the fact that the matter remains under investigation by the Procurator Fiscal at Stirling. He stated that this investigation is moving slowly but that there remain doubts as to the credibility of Mr A and doubts regarding the Committee's decision if Mr A is found guilty of these matters. The Respondent confirmed that he had personally written again to both the Chief

Constable of Central Scotland Police and to Detective Sergeant McGowan on 25 November 2008 and indicated that copies were available if required. He wrote asking for an update on the current position but unfortunately has received no response. The Respondent submitted that given that these proceedings remain extant it is inappropriate that these current proceedings are being taken and submitted that these proceedings should be postponed.

The Respondent agreed that the fourth preliminary plea should be considered along with the second preliminary plea. He referred the Tribunal to Article 5 of the Complaint where it is averred that he has failed to comply with the Complainers' order and to contact Mr A regarding payment of the fees. He stated that he had two issues to raise regarding that Article. Firstly he advised that there is an evidential matter, whether in the light of the possible proceedings, any payment should be made to Mr A. Secondly, he stated that he is not permitted to contact Mr A while such prosecutions are outstanding. He submitted that his position was that Article 5 should be dismissed in its entirety as he could not comply with the Complainers' Determination and Direction while the criminal proceedings are continuing.

SUBMISSIONS FOR THE COMPLAINERS RE THE SECOND AND FOURTH PRELIMINARY PLEAS

Mr Reid submitted that at its best, on the basis of the productions referred to, there may well be a continuing criminal investigation but that is as far as it appears to have gone. Mr Reid submitted that there have been no criminal proceedings raised against Mr A. He submitted that even if criminal proceedings were brought that that would not affect the Tribunal proceeding with the case, although the Tribunal might want to consider sisting the case. Mr Reid submitted that these preliminary pleas have no substance.

SUBMISSIONS FOR THE RESPONDENT RE THE THIRD, FIFTH AND SIXTH PRELIMINARY PLEAS

In relation to the third preliminary plea the Respondent submitted that this action is premature and should be dismissed. The Respondent stated that he previously advised the Complainers by letter dated 23 February 2008 that he was reserving his right of

appeal in respect of the decisions reached by each of the Committees who gave consideration to the initial complaint by Mr A. The Respondent referred the Tribunal to pages 5a(i) and 5a(ii) of the said Inventory and in particular to the penultimate paragraph of page 5a(ii) where it is stated -

“I would advise that until receipt of answers to the above questions and for a reasonable period thereafter, I reserve the right to challenge the decision of the Committees of both 16 October and 24 January, either by appeal or by Judicial Review.”

The Respondent advised that subsequent to this he was advised by the Complainers that there was no statutory right of appeal against the decision of the Professional Competence Committee. The Respondent stated that he found this to be surprising. The Respondent submitted that without a right of appeal and an opportunity to have these conclusions tested before the matter was referred to the Tribunal this procedure is contrary to the principles of natural justice. The Respondent stated that the Professional Competence Committee, prior to submitting this Complaint to the Fiscal, reached a view that the evidence of Mr A was credible and reliable. However, in view of the ongoing investigation there must be doubt over this and in turn doubt as to the basis on which the Professional Practice Committee had reached its conclusions.

In relation to plea in law 5 and 6 the Respondent stated that he wished to raise additional matters. He drew the Tribunal’s attention to page 5a(ii) of the said Inventory at paragraph number 5 -

“At issue 8, paragraph 1 lines 21 and 21, reference is made to the statement provided by Mrs B, a member of the Law Society staff, but that no such statement was supplied by (the Respondent). I had assumed that the Law Society, being a professional body concerned with both Solicitors and the law, would be aware that this statement is not available to me. Under the rules of Criminal Case Procedure, I was entitled to have sight of this statement but not to receive a copy thereof. I shall be pleased to learn why the Client Relations Office, and all Committees who have considered this matter, have chosen to ignore a vital piece of evidence in my defence and why neither the Client

Relations Office, in investigation of this complaint, and any subsequent Committee in its deliberations, has failed to consider it appropriate to ask Mrs B for details of the statement which she has provided?"

The Respondent stated that this was not the first time he had raised the matter of Mrs B's statement in correspondence with the Complainers. He stated that the Complainers advised him that they did not take a statement from Mrs B because he had failed to tell them how important it was to his case. The Respondent submitted that having been directed to vital evidence and having ignored it, the Complainers have erred in determining this case without it. The Respondent submitted that the Complainers' response was inappropriate. He stated that failure to consider this statement is contrary to the principles of natural justice. He submitted that this is such a fundamental error on the part of the Complainers' Professional Competence Committee and Client Relations Committee such as to negate the decisions of these Committees.

SUBMISSIONS FOR THE COMPLAINERS RE THE THIRD, FIFTH AND SIXTH PRELIMINARY PLEAS

Mr Reid stated that there is a procedure to be followed in these matters. The Client Relations Committee refers the matter to the Professional Competence Committee and it decided to refer the matter to the Fiscal for a Complaint to be referred to the Tribunal and then there is an appeal to the Court of Session. Mr Reid submitted that whether or not there is any right of appeal from the Professional Competence Committee's decision is irrelevant.

In relation to Mrs B's statement, Mr Reid submitted that he did not know a great deal about it but that he presumed that any statement she supplied was to the Crown in connection with alleged embezzlement on the part of the Respondent. Mr Reid submitted that this Complaint does not allege embezzlement on the part of the Respondent. Mr Reid submitted that this seemed to him to be a straightforward point of procedure. There is no right of appeal from the decision of the Professional Competence Committee and it is right that the matter is then referred to the Tribunal for a hearing. Mr Reid submitted that there is nothing in this procedure which is

contrary to natural justice. In response to a question from the Tribunal, Mr Reid indicated that it would be possible to judicially review the decision of the Professional Competence Committee but he was not aware of that right having been exercised in this case.

SUBMISSIONS FOR THE RESPONDENT RE THE SEVENTH PRELIMINARY PLEA

The Respondent submitted that the Complainers failed to cross copy evidence submitted by the complaint instigator prior to reaching its conclusion. The Respondent submitted that that was an error on behalf of the Complainers and that error not having been examined on appeal, he submitted that this action is premature and should be dismissed. The Respondent submitted that this plea in law relates to the conduct of the Professional Competence Committee which had up until the final stage of their procedures, crossed copied all of the correspondence between himself and the Committee and Mr A. The Respondent stated that it seemed that in the final stages of this procedure that Mr A found something on the internet which he submitted to the Professional Competence Committee. The Respondent submitted that this fact was unknown to him and the Professional Competence Committee gave consideration to it and decided not to cross copy it to him.

In response to a question from the Tribunal the Respondent confirmed that the item concerned was a judgement from a decision of an English court in relation to a company which he was assisting in Italy. The judgement said that the Respondent had changed sides in the course of the court case and the Respondent submitted that he was given no opportunity to comment on this information.

In response to a question from the Tribunal, the Respondent advised that the Professional Competence Committee had not referred to this in their decision. However he advised that he should have been given an opportunity to comment on it. The Respondent submitted that the comment in the judgement may well have been influential as the comment goes to his character and it suggested that he had not acted appropriately and he feared that the Committee may have been influenced by that.

SUBMISSIONS FOR THE COMPLAINERS RE THE SEVENTH PRELIMINARY PLEA

In response, Mr Reid submitted that an internet published decision of an English court was of no relevance in this matter if its only adverse comment was that the Respondent had changed sides. Mr Reid submitted that the Respondent could have challenged the decision of the Professional Competence Committee by Judicial Review if he believed that they took into account irrelevant material. However, Mr Reid submitted that there is no reference in the Professional Competence Committee's decision to indicate that they took this into account. Mr Reid submitted that this was an irrelevant submission which should be repelled as there was nothing untoward in the procedure.

SUBMISSIONS FOR THE RESPONDENT RE THE EIGHTH PRELIMINARY PLEA

The Respondent submitted that the averments in the Complaint are irrelevant and lacking in specification and therefore the action should be dismissed. The Respondent stated that this plea in law relates to the standard of proof before the Tribunal. He referred the Tribunal to Articles 2.7 and 2.8 of the Complaint. The Respondent submitted that in matters such as these, when the standard of proof is beyond reasonable doubt, he required a full and definitive knowledge of the case against him.

In Article 2.7 he submitted that he is simply told that -

“The Respondent advised Mr A that the free sale proceeds had been lodged with a third party, the sum would gain interest, that he would not receive payment until he had signed the Minute of Agreement and that Mr A's father-in-law was responsible for the delay. This explanation was untrue.”

The Respondent submitted that there is nothing in that averment to tell him how he is meant to have advised him or when that was alleged to have happened. There is nothing apart from the bald statement that the explanation was untrue, there is no further explanation. He submitted that his defence to this all along in papers

submitted to the Client Relations Committee and to the Professional Competence Committee has been to the effect that there is a misunderstanding on Mr A's part as to what happened.

The Respondent submitted that the Fiscal has to go beyond the simple assertions contained in these averments in order that he can properly prepare his defence. He submitted that he needs to be told how and what had been done.

The Respondent submitted that the same is true in respect of Articles 2.8 and 2.9. He submitted that at Article 2.8 it states -

“The Respondent advised Mr A that he would give him a loan for £10,000 and that it would be interest free.”

The Respondent submitted that there is nothing beyond that to suggest how and when this was supposedly done.

SUBMISSIONS FOR THE COMPLAINERS RE THE EIGHTH PRELIMINARY PLEA

Mr Reid stated that his position is that the averments in Article 2.7 and 2.8 are perfectly clear. The averment at Article 2.7 narrates the sale of the former matrimonial home. The second paragraph is straightforward and follows on from that. Mr Reid submitted that it is all perfectly clear and that it is sufficient specification for the Respondent to prepare a proper defence. Mr Reid submitted that the same comments apply to Article 2.8 which is equally clear. Mr Reid submitted that these two averments are specific.

The Respondent submitted that his ninth plea in law was no longer insisted upon.

DECISION

The Tribunal adjourned to consider the submissions made by both parties on the pleas in law together with the productions lodged. In relation to the first plea in law the

Tribunal was of the view that this plea should be dismissed as criminal proceedings are not a bar to disciplinary proceedings. In these proceedings the rules of evidence are governed by the Civil Evidence (Scotland) Act 1988 which means that uncorroborated and hearsay evidence is admissible. In addition, this Complaint contains averments relating to professional misconduct which differ entirely from the allegations considered by the Police and the Crown Office. The Tribunal accordingly dismissed the first plea in law.

In relation to the second and fourth pleas in law the Tribunal was of the view that these pleas should also be dismissed as no proceedings have been raised against Mr A and even if proceedings were raised at this stage that would not be a bar to the Tribunal holding a hearing in relation to this Complaint and making an assessment as to the credibility and reliability of both the Respondent and Mr A in relation to the factual circumstances surrounding this Complaint. The Tribunal was of the view that in relation to the issue of contact with Mr A that this is a matter on which evidence will require to be heard. The Tribunal accordingly dismissed the second and fourth pleas in law.

In relation to the third, fifth and sixth pleas in law the Tribunal was of the view that these pleas should also be dismissed as the Tribunal agreed with Mr Reid's submission that whether or not there is any right of appeal from the Professional Competence Committee's decision is irrelevant in dealing with this Complaint. The Committee decided to refer this matter for prosecution and the Respondent has elected to deny the Complaint and thus has required the Complainers lead the evidence to attempt to prove the averments of fact and professional misconduct as outlined in the Complaint. He will have an opportunity to lead evidence to refute the allegations against him. The Tribunal considers that there is nothing in this procedure which is contrary to natural justice. The Tribunal accordingly dismissed the third, fifth and sixth pleas in law.

In relation to the seventh plea in law the Tribunal was of the view that this plea is irrelevant. As stated above the Professional Practice Committee decided to refer this matter for prosecution and the Respondent has elected to deny the Complaint and thus has required the Complainers to lead evidence to attempt to prove the averments of

fact and professional misconduct as outlined in the Complaint. The Respondent will have an opportunity to lead evidence to refute the allegations against him. The Tribunal accordingly dismissed the seventh plea in law.

In relation to the eighth plea in law the Tribunal had regard to the terms of Articles 2.7 and 2.8 of the Complaint. The Tribunal considers that these averments are relevant to the averments of Professional Misconduct contained in Article 4.2 of the Complaint and are sufficiently clear and specific to allow the Respondent to prepare a defence. The Tribunal accordingly dismissed the eighth plea in law.

Mr Reid made a motion for the expenses of the debate to be awarded against the Respondent on the ground that the Respondent was unsuccessful. The Respondent did not oppose that motion. Tribunal accordingly awarded expenses in favour of the Complainers in relation to this hearing.

The Tribunal directed that publicity be given to this decision and that the publicity will include the name of the Respondent but directed that such publicity should be deferred until the substantive hearing in relation to this Complaint and until further information is received regarding possible criminal proceedings connected with this matter.

Vice Chairman