

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

DECISION  
in Appeal under Section 42A(7) of  
the Solicitors (Scotland) Act 1980

By

BRUNTON MILLER, Solicitors,  
Herbert House, 22 Herbert Street, Glasgow  
APPELLANTS

against

THE COUNCIL OF THE LAW SOCIETY  
OF SCOTLAND  
FIRST RESPONDENTS

and

Mr "A"  
SECOND RESPONDENT

1. An Appeal was lodged with the Scottish Solicitors' Discipline Tribunal under the provisions of Section 42A(7) of the Solicitors (Scotland) Act 1980 by Brunton Miller, Solicitors, Herbert House, 22 Herbert Street, Glasgow ("the Appellants") against (a) a finding by the Council of the Law Society of Scotland ("the Law Society") dated 17th April 2000 that the Appellants provided inadequate professional services in relation to their client Mr "A" (b) a Determination that the fees to which the Appellants should be entitled in the particular matter should be £2,860.50 inclusive of VAT and (c) a Direction that the Appellants should refund to Mr "A" the sum of £4,000.
  
2. In accordance with the Rules of the Tribunal, the Appeal was formally intimated to the Law Society and Mr "A"; and Answers were lodged on behalf of the Law Society.

3. Having considered the Appeal with the Answers, the Tribunal resolved to set the Appeal down for Hearing and appointed that the Appeal should be heard on 27th September 2000. A Joint Minute was lodged between the Appellants and the Law Society wherein their respective productions were agreed.
4. At the Hearing on 27th September 2000, the Appellants were represented by Mr James McCann, Solicitor, Clydebank. The Law Society was represented by Mr Sean Lynch, Solicitor, Kilmarnock. Mr "A" and his wife attended the Hearing but did not participate in the proceedings.
5. Having considered the productions lodged and the submissions for the Appellants and the Law Society, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 27th September 2000. The Tribunal having considered the Appeal by Messrs Brunton Miller ("the Appellants") against a finding of inadequate professional services by the Council of the Law Society of Scotland, ("the Law Society") in relation to Mr "A" a Determination that fees to which the Appellants should be entitled should be £2,860.50 inclusive of VAT and a Direction that the Appellants refund to Mr "A" the sum of £4,000, uphold the Appeal and quash the finding and the said Determination and Direction; Find the Law Society liable in respect of the expenses of the Appellants and the Tribunal 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 Six of the Law Society's Table of Fees for general business; and Direct that publicity

be given to this decision but that this publicity shall not include the name of Mr “A” or otherwise identify him.

(Signed) JOHN W. LAUGHLAND

Chairman

6. A certified copy of this Decision together with a copy of the foregoing Interlocutor were duly sent to each party by recorded delivery post on 14<sup>th</sup> November 2000

IN NAME OF THE TRIBUNAL

Chairman

## NOTE

This is an Appeal under the provisions of Section 42A(7) of the Solicitors (Scotland) Act 1980, as amended, against a finding of inadequate professional services, a Determination under Section 42A(2)(a)(ii) and a Direction under Section 42A(3) of the said Act, all of which were intimated to the Appellants on 17th April 2000.

The Appellants had acted for Mr "A"(the Second Respondent) and on 5th July 1995, Mr "A" wrote to a Deputy Secretary of the Law Society's Client Relations and Complaints Office as follows:

### **Complaint against Mr.W. Cairns**

I have to inform you that I wish to raise a formal complaint against Mr. W. Cairns, Solicitor, of the firm Brunton Miller, 7 Colquhoun Street, Helensburgh, on the grounds that he failed to provide adequate professional service for me as his client and I suffered as a result of this.

### **Background to the complaint.**

In April 1989 I consulted Mr. Cairns of Brunton Miller with reference to the publication of an article in that month's "Jaguar Driver". Mr. Cairns instructed an English agent, Mr Wadie of Rice, Jones and Smiths. These two solicitors continued to represent me until August 1994 by which time I was concerned about various aspects of the case and approached an English firm of solicitors for a second opinion. On the basis of this firm's very disturbing advice, I immediately appointed Edge and Ellison to represent me and they concluded an Out of Court Settlement at the end of June (1995).

In December 1994, given the problems my new solicitors were encountering with the case, I felt I had reason for complaint against Mr. Cairns over his handling of the case in the previous five and a half years. I contacted Brunton Miller to ascertain the correct procedure for raising a complaint and was advised by a Partner that a letter should be directed to the Senior Partner, Mr Douglas Dalglish. I forwarded my letter of complaint and supporting copied correspondence and subsequently met with Mr Dalglish in the firm's Glasgow office. Mr Dalglish advised that he had read some of the papers and considered there was a prima facie case of negligence against the English agent, Mr. Wadie, but the firm of Brunton Miller had no case to answer in his opinion. He offered to act on my behalf to sue Rice, Jones and Smiths.

I declined this offer and was advised to consult the Law Society as Mr Dalglish felt we had nothing further to discuss.

The letter continued with eight numbered heads of complaint. A copy of Mr "A's" letter was forwarded by the Law Society to the Appellants on 21st July 1995 and Mr Cairns replied on 27th July 1995. At that time,

Mr "A" was continuing to defend an action which had been raised by the Appellants for their fees, and consideration of the complaint was heldover pending the conclusion of these proceedings.

On 12th October 1998 Mr "A" informed the Law Society that he wished to resume and pursue his Complaint. The Law Society wrote to the Appellants on 26th October 1998, by which date Mr Cairns was no longer a partner with the Appellants. The Appellants replied to the Law Society on 6th January 1999, setting out separate responses to each of the numbered paragraphs contained in Mr "A's" letter of 5th July 1995.

The matter was passed to a lay member of one of the Law Society's Complaints Committees. That member (hereinafter referred to as "the Reporter") prepared a Report dated 24th May 1999 in which she summarised the eight heads of complaint as set out in Mr "A's" original letter of 5th July 1995 and recorded as background that she had access to the Law Society's file and to the Appellant's files for the period from 25th January 1989 to 25th March 1992 and from 2nd April 1992 to 26th February 1996. There then followed "Facts and Circumstances" in eight separate chapters, each chapter commencing with the relevant head of complaint. There was produced to the Tribunal a copy of the said Report and a copy of a revised Report dated 1st July 1999. A copy of the revised Report was sent by the Law Society on 20th July 1999 to both the Appellants and Mr "A". Mr "A" replied on 9th September 1999 and the Appellants replied on 13th September 1999. The solicitor for the Appellants, Mr James A. McCann of Clydebank, (who also appeared for the Appellants at the Hearing on 27th September 2000) wrote to the Law Society further on 22nd September 1999.

These replies were considered by the Reporter in a further document headed "Response to Facts and Circumstances Report and Discussion", and she concluded that only heads of complaint one, three, four, and eight should be upheld. Further, the Reporter recommended a basis on which the Appellants might effect a financial settlement with Mr "A". That document, which is referred to as "The Reporter's Opinion" was sent on 21st October 1999 to the Appellants and Mr "A". Mr McCann and Mr "A" both replied to the respective letters on 21st October 1999 and provided further submissions. At this stage, the Law Society had correspondence with Mr "A" regarding a possible basis for settlement. This correspondence, and in particular a letter to Mr "A" of 17th November 1999, was not disclosed to the Appellants or Mr McCann. Mr McCann then requested that a solicitor member of the Committee should provide a further Report. This aspect was considered by the Complaints Committee at a meeting on 2nd December 1999, but the Committee took the view that it was unnecessary to obtain another Report. Further representations were made by Mr McCann in the course of which Mr McCann submitted that the matter should be referred to the English Law Society's Office for the Supervision of Solicitors. This suggestion was rejected by the Complaints Committee at a meeting on 3rd February 2000. Mr McCann also suggested that Mr Bruce Ritchie, the Law Society's Director of Professional Practice, be asked for his opinion. On 8th February 2000, an internal memorandum was submitted to Mr Ritchie, and his advice was recorded in an attendance note dated 21st February 2000. That advice was not communicated to the Appellants or Mr McCann. In the meantime, there was further correspondence and representations from Mr McCann, and in particular there was submitted a full statement taken from Mr Cairns.

The whole papers were placed before a further meeting of the Complaints Committee on 2nd March 2000. The deliberations of that Committee were not communicated to any of the parties at that stage. On 14th March Mr McCann pointed out to the Law Society that in settling the action with Mr "A", the Appellants had given a significant abatement of fees.

At a meeting of the Council of the Law Society on 31st March 2000, the complaint of inadequate professional service was upheld, in respect of two heads of Complaint only namely

(a) a failure to advise the complainer (Mr "A") adequately on the full financial implications of instructing both Scottish and English agents; and

(b) a failure to ensure progress for significant periods of time,

The Council determined that the fees to which the Appellants were to be entitled was £2860.50 inclusive of VAT and that the Appellants were required to refund to Mr "A" the sum of £4,000 in respect of fees and outlays which they had rendered. The Notice containing that decision was sent to the Appellants on 17th April 2000. The Notice was accompanied by a Schedule which in effect recorded the deliberations of the Complaints Committee and the adoption of its recommendations.

The finding of a "failure to advise the complainer adequately on the full financial implications of instructing both Scottish and English agents" was based on the third head of complaint as set out in the Reporter's Opinion namely

**3. adequately advise on the full financial implications of Mr "A" pursuing his case in general and specifically on the substantial loss he would face even successful, because of taxation of the accounts;**

Before the need for this case arose, .....Mr Cairns was instructed to act for Mr "A" concerning a letter, which had been written to the board members of the club later implicated in the case to which this complaint applies. Mr "A" believed that defamatory remarks had been made about him in the letter and sought a retraction and apology. To this end Mr Cairns wrote his first letter for Mr "A" on 25th January 1989.

Following this he wrote to Mr "A". One sentence stands out from that letter, it is this ... "From a practical point of view therefore I would suggest that you simply leave matters for the present moment, given the legal difficulties which would face you in attempting to take it further."

In the telephone call made by Mr "A" on 11/7, ..... as well as being instructed to take the advice of an English solicitor he is also asked to find out the "likely costs" and the "Prospects of success". Also within the instruction is the statement .... "May be worth spending some money to see their defences." Mr Wadie's response to these points which were included in his first letter written to Brunton Miller, is that he believes Mr "A" had a strong case and related to costs makes the statement .... "If the worst happens and the Club justify and the action proceeds to trial, then the costs for the loser to bear could be very considerable indeed. I would not like to hazard a guess but they could be at least £50,000 and may be £100,000". He then goes on to say that at any point Mr "A" can terminate the action and pay the clubs costs and his own. "... the earlier this happens, the lower the costs".

When the fee note arrived from Counsel and was sent on to Mr "A" in November 1989, Mr Cairns in his covering letter writes... "I think this gives an indication as to how expensive these matters are..." Then in April 1990 on sending on the first from Rice Jones and Smith for £2,259.75, he writes that he finds it ... "quite staggering". And at that point it was already apparent that the case had still some way to go.

Related to the shortfall, Mr "A" has not perhaps given enough specific detail in his complaint. It may relate to the settlement his solicitor was able to agree for him, the value placed on his case by an Auditor of the Court, and the loss of fee, plus vat for that evaluation. It may also include the shortfall paid because of the engagement of both Scottish and English Solicitors..... It may have to do with the fact that some precognitions were re-done. The Reporter would need more specific information to be more certain and to address this aspect with confidence.

Brunton Miller claim that Mr "A" was fully advised throughout. In a letter to Mr Wadie dated 27 July 1989, speaking of Mr "A", (with whom he has met on 26th July, confirmed in a file note) Mr Cairns writes .... "We have also explained to him that there is likely to be a discrepancy between chargeable expenses for conducting this matter and those that are recoverable in the event of success." He then goes on to ask on behalf of his client if Mr Wadie can give any approximation as to whether that discrepancy will exceed possible damages. The only answer given by Mr Wadie is to report on 3rd August that Counsel has stated that the claim is worth between £2,000 and £5,000.

Though Mr "A" was spending significant sums throughout this action it is clear that he considered right to be on his side and that he did eventually expect that he would get his money back. There may however have been confusion over costs and expenses, though on 15th January, in setting out for the Defence the expectations of Mr "A", Mr Wadie says that he is looking for them to indemnify "him in respect of his costs and his out of pocket expenses." Also on 19th December 1992 related, to comments on a submission being made by Counsel, Mr "A" asks that the words "and expenses" be added to a clause beginning "indemnifying him in respect of his costs..". In a file note dated 14th June 1993, made by Mr Wadie following a telephone conversation with Mr "A", he writes ... "Mr "A" said that he had spent £25K and he did not intend to lose it but that he was not particularly bothered about recovering damages."

In addition to requests for estimates of what the action would cost,.....Mr Cairns did write a detailed letter to Mr Wadie on 14th December 1993 asking about "estimate of total costs" and "how much of those costs would be recoverable" and "what proportion of Brunton Miller's charges are likely to be recoverable against the other side in the event of Mr "A" being successful" etc. No reply is recorded to this letter.

and in respect thereof the Complaints Committee concluded

The Committee took the view that, notwithstanding the fact that the English agent, Mr Wadie was asked on a number of occasions in respect of the fees, it was clear that insufficient advice had been given to Mr "A" by Brunton Miller as to the significance and implications of requiring to pay the fees of two agents and the fact that all costs would not be recoverable in due course. Accordingly, the Committee recommends that this Head of Complaint be upheld.

The charge of "failure to ensure progress for significant periods of time was based on the fourth head of complaint in the Reporter's opinion, namely

**4. progressing matters for significant periods of time and act timeously at various stages having failed to appreciate the significance of the fact that the plaintiff had control of action, thus putting their client at risk and expense from court action initiated by the defendants;**

.....Mr "A's" action lasted a very long time. The files indicate that there were many reasons for this. These included delays related to serving writs; tracing witnesses; enlisting support from potential witnesses; holidays of various key players; delaying tactics on both sides; time to respond to legal documents; change of solicitor on defence side; awaiting instruction; and awaiting payments. Examples related to each of these headings can be found in the files. There are also many examples of delays which might be interpreted as being caused by incompetence, size of workload and over-commitment of the English Agent.....

The numerous letters and copy letters as well as file notes specific to meetings and telephone calls show that Mr "A" and Mr Cairns were in very regular, almost constant, contact, from January 1989 until February 1994. They also reflect that Mr Cairns acted most frequently as "middle-man" following the decision to engage Rice Jones & Smiths as English Agent in July 1989. After that date Mr Wadie, and also English Counsel very much dictated the game plan and decided how best, in their professional opinion, to proceed. Letters between Mr "A" and Mr Cairns illustrate that they both found the pace and sometimes direction of these frustrating and puzzling.

A letter written to Mr Cairns from Mr Wadie, copied to Mr "A" illustrates two key points within this heading. Mr Cairn had suggested a course of action to Mr Wadie, related to pinning down specific witness support. Mr Wadie replied ... "I do not consider it necessary for you to contact the persons who identified Mr "A" from the editorial at this stage". This shows that timing and direction of action was determined by Mr Wadie. Ambiguously in the same letter he writes ... "As the Plaintiff, Mr "A" has control of the timetable for this action".

and in respect of the foregoing, the Complaints Committee concluded

Whilst the Committee had some sympathy with Mr Cairns in that he was writing to the English agents on a regular basis but getting no response, he ought to have retained control. In terms of the view taken by the Director of the Professional Practice Department, the onus was firmly on Messrs Brunton Miller to ensure that the matter was being progressed and thus perform a "supervisory" role. The Committee was therefore of the view that there ought to have come a time, much earlier than when the decision was in fact taken, where it should have been recognised that the work being done by the English agents was taking too long. Accordingly, the Committee felt that instructions ought to have been withdrawn from the English agents at an earlier stage.

Messrs Brunton Miller ought to have retained control ensuring that the work was done on behalf of Mr "A". The complainer had established at an early date that there was an urgency to the matter yet the English agents had still not taken action (five) years later. The delay had very serious consequences as the Defendants in the libel action attempted to obtain an order that the action should be struck out because of delays.

Accordingly, the Committee recommends that this Head of Complaint be upheld.

The Appellants' grounds of appeal were set out in their Appeal and more fully in the Submission which was lodged by Mr McCann in advance of the hearing. The Appellants' case was based on a criticism of the procedures adopted by the Law Society, the duties expected of the Appellants and the lack of substance to support a finding of inadequate professional service. Mr McCann addressed the Tribunal in regard to each of those aspects and also in relation to the monetary Direction of the Law Society. The Tribunal carefully considered the whole submissions by Mr McCann and the reply by Mr Lynch, acting as Fiscal for the Law Society.

Much of Mr McCann's criticism was directed to the approach taken by the Law Society's Reporter, who on this occasion was a (non-solicitor) member of the particular Committee. The Reporter used expressions which were considered to be inappropriate, and having formed a view regarding a Scottish Solicitor's duties in relation to proceedings in England, it was claimed that the Law Society showed a marked reluctance to change. The Law Society also failed to disclose certain correspondence with Mr "A" in relation to a possible disposal of the Complaint.

Mr Lynch in his response rebutted each of those criticisms, maintaining that the Law Society had correctly followed the laid down procedure for dealing with complaints of inadequate professional services.

The Tribunal has carefully considered these various submissions, but the criticisms have to be looked at in the context of the whole inquiry. The complaints procedure adopted by the Law Society is intended to be investigative, and it is on this basis that the Law Society looks to both the complainer/client and the solicitor to assist in their enquiries, and at the later stage invites each party (as they were in this case) to comment on any provisional findings. In that it is largely a fact-finding exercise, it is reasonable for the particular Complaints Committee to arrange for one of their members to prepare a Report based on his or her examination of the relevant files and correspondence and to reach a conclusion on the same and that such member be either a solicitor member or a lay member, bearing in mind that the particular Report and its conclusions will thereafter be considered by a Committee comprising both solicitor and lay members and finally by the Council of the Law Society. Such procedures ensure that matters are thoroughly investigated and that consideration is given to

both the concerns of the complainer and the interests of the solicitor. The enquiries are necessarily time-consuming and it is not unreasonable that at an appropriate stage, the Law Society may enter into a form of mediation and look for an early disposal in a form which is acceptable to both parties.

In this case, there was criticism of the approach adopted by the lay Reporter, in that it was suggested that she used inappropriate expressions and did not fully appreciate the relationship between Scottish and English Solicitors where a client in Scotland was instructing the former and the latter was employing Counsel to conduct proceedings in the English Courts. However, this is to overlook that the Reporter's enquiry was only one step in the whole process and there were several opportunities for a professional input when the matter was considered by the full Committee and then later by the Council of the Law Society. Indeed it is significant that the full Committee did not accept the Reporter's recommendation in relation to two heads of complaint. There was also criticism that the Law Society (of Scotland) had not made enquiries of the (English) Office for the Supervision of Solicitors, to ascertain whether in fact anything had gone wrong in England. However it was the conduct of the Scottish Solicitor which was the issue and the actings of the Appellants had to be considered having regard to the circumstances as the case developed notwithstanding whether or not the professional conduct of the English Solicitors or the Counsel instructed by them fell short of an acceptable standard.

In the written Submissions, it was pointed out that in October and November 1999, there had been correspondence between Mr "A" and the Law Society which had not been disclosed to the Appellants or their solicitors. Indeed in the Joint Minute, it was confirmed that the particular Law Society letter to Mr "A" dated 17th November 1999 had

not been communicated to the Appellants or their solicitors prior to the final determination on 17th April 2000. Mr McCann did not expand on this point in his address to the Tribunal. However having had regard to the particular correspondence, the Tribunal is satisfied that the Law Society's letter of 17th November 1999 to Mr "A" was explanatory and that the Appellants were in no way prejudiced by the non disclosure.

It was also acknowledged in the Joint Minute that the internal memorandum to Mr Ritchie and the record of his response (dated respectively 8th and 21st February 2000) had also not been disclosed to either the Appellants or their solicitors prior to the final determination. Mr McCann implied that the Appellants had been prejudiced by the failure on the part of the Law Society to disclose the advice which had been given by Mr Ritchie. However this has to be looked at in the context that Mr Ritchie is a senior member of the Law Society Secretariat. It is not unreasonable, and indeed it is day-to-day practice for Law Society Committees to take the advice of their own staff and it is not accepted that such "In house" advice must necessarily be conveyed to the parties. The Law Society procedure was also challenged in that the recommendation of the Complaints Committee was not disclosed to the parties prior to the deliberations of the Council, but such criticism overlooks the fact that the Committee had already made the fullest enquiries and had given the Appellants every opportunity of making their submissions, an opportunity of which they fully availed themselves. The Tribunal therefore does not accept that the Appellants were prejudiced because the outcome of the Committee deliberations was not conveyed to the parties before the matter was finally considered by the full Council of the Law Society.

Mr Ritchie had advised on 21st February 2000 that the onus was on the Appellants to ensure that the matter was being progressed and this advice was incorporated in the recommendation of the Complaints Committee which was accepted by the Council. Mr McCann submitted that by conveying that the Appellants had a duty to ensure progress, the Law Society had overstated the obligations upon the Appellants in the particular circumstances - the duty being no more than to take reasonable care. The Tribunal accepts that in using the word "ensure", the Law Society overstated the obligation which was incumbent on the Appellants in relation to the English proceedings. However, they were acting as agents in instructing the English solicitors and this implies certain duties. Section 53B of the Solicitor (Scotland) Act 1980 confers powers on this Tribunal in relation to such appeals but these powers do not extend to remitting a matter back to the Council of the Law Society. It is therefore for this Tribunal to look at the whole circumstances to determine the appropriate duty and decide the Appeal accordingly.

On the matter of duty, Mr McCann also pointed out that Counsel had been instructed in the English Proceedings, and in support of the proposition that where Counsel is employed, the solicitor is not in charge of the case, he founded on the dicta of the High Court in HMA v McIntosh (No 2) 1997 SCCR 389 at 395 and HMA v McGinty 2000 SCCR 393 at 397. The principle behind these decisions has been noted, but nevertheless the Appellants were instructed, and accepted instructions in relation to civil proceedings in England, and certain duties were therefore incumbent on them.

Mr McCann and Mr Lynch separately addressed the Tribunal on the question of whether the facts as found supported the findings of inadequate professional services. The determination of the Complaints Committee in relation to the third head of complaint, upon which the relative decision of the Council of the Law Society was based, was that "insufficient advice had been given to Mr "A" by (the Appellants) as to the significance and implications of requiring to pay the fees of two agents and the fact that all costs would not be recoverable in due course". Mr McCann pointed to Mr Cairns initial advice to Mr "A" when Mr Cairns discouraged him from taking legal action, having regard to the comment made by the English solicitor, Mr Wadie to the effect that the costs could be at least £50,000 and may be £100,000. The Reporter also recorded Mr Cairns' statement "We have also explained to him (Mr "A") that there is likely to be a discrepancy between chargeable expenses for conducting this matter and these that are recoverable in the event of success." Again there was no indication that this was not conveyed to Mr "A". The Complaints Committee further noted that the matter of fees was raised with Mr Wadie on a number of occasions. In contrast, neither the Reporter nor the Complaints Committee set out any factual evidence to support the bald statement that "insufficient advice" had been given to Mr "A". Having regard to the absence of substantive evidence to support that statement and the contrary evidence that Mr "A" was warned of the financial implications of the intended action, and that matters of fees and expenses were discussed with him from time to time during the currency of the proceedings, the Tribunal is of the opinion that the finding of inadequate professional service on the third head of complaint was not supported by the facts, and should therefore be quashed.

Mr McCann's submissions in relation to the fourth head of complaint were almost wholly directed to the Law Society's procedures and by implication that the finding of inadequate professional services was unfounded. The charge presupposes that there was undue delay in prosecuting the proceedings in England and that therefore "instructions ought to have been withdrawn from the English agents at an earlier stage". The Reporter noted that Mr "A's" action in England lasted a long time and the Reporter recorded various reasons, many of them wholly understandable, for the apparent delay. The Reporter added that there were many examples of delay attributable to the English agent, but the only specification for this was in relation to the eighth head of complaint where circumstances were set out implying that there was a failure by the English solicitor in relation to the period from December 1990 to April 1991. There were no facts recorded which might have demonstrated that by a certain point, such delay as there may have been on the part of the English solicitor had become so apparent to the Appellants that it became their duty to withdraw instructions. There was some reference to an attempt by the Defendants to have the English action struck out because of delays, but there was no evidence to suggest that there were delays which might have warranted that application. In contrast the Reporter noted that Mr "A" and Mr Cairns were in very regular contact. There was no suggestion of any delay on the part of the Appellants or that a point was reached when the Appellants ought to have withdrawn instructions from the English solicitors. The Tribunal therefore concludes that there were insufficient grounds for the Complaints Committee and therefore the Council of the Law Society, to conclude that there was an inadequate professional service in relation to the fourth head of complaint and this finding is therefore also quashed.

The Fiscal for the Law Society did not oppose Mr McCann's motion for expenses.

Paragraph 23 of the Fourth Schedule to the Solicitors (Scotland) Act 1980 extends to paragraph 8 and 8A. the mandatory direction for publicity in relation to the solicitors concerned in this procedure, but it is not necessary that this publicity should extend to the name of Mr “A” and accordingly a direction has been made excluding his name from the publicity which will be given to this decision.

Chairman