

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

F I N D I N G S

in Complaint

by

**THE COUNCIL OF THE LAW
SOCIETY of SCOTLAND**

against

**MICHAEL CHARLES GRAY.
Solicitor, formerly of 6 Clifton
Terrace, Edinburgh and now of
115 Morrison Street, Edinburgh**

1. A Complaint dated 30 October 2003 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Michael Charles Gray, Solicitor, formerly of 6 Clifton Terrace, Edinburgh and now of 115 Morrison Street, Edinburgh (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. No Answers were lodged for the Respondent.
3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 14 January 2004 and notice thereof was duly served on the Respondent.

4. The hearing took place on 14 January 2004. The Complainers were represented by their Fiscal Mr Paul Reid, Solicitor, Glasgow. The Respondent was not present and not represented .
5. The Complainers led the evidence of one witness and lodged various productions.
6. The Tribunal found the following facts established:-

1. The Respondent is a Solicitor enrolled in Scotland. The Respondent was born on 5 June 1949. He was admitted as a Solicitor on 13 August 1986 and enrolled in the Register of Solicitors on 1 September 1986. From on or about 13th March 1989 until on or about 31st October 1996 in various roles from employee to associate and thereafter partner he was employed with the firm Mackenzie & Dunn, Solicitors. From on or about 1st November 1996 until 6th December 1996 and then from 3rd January 1997 to November 2003 the Respondent practised as a sole practitioner operating as the firm Grays, Solicitors, formerly of 6 Clifton Terrace, Edinburgh and now of 115 Morrison Street, Edinburgh. The Respondent is not currently in practice as a solicitor.

2. **Mr A**

Mr A consulted the Respondent in connection with an action for divorce which was ongoing within the

English jurisdiction. By letter dated 12th July 1999 he invoked the aid of the Complainers regarding the manner in which the Respondent dealt with the instructions received from him. The Complainers obtained sufficient information from him to allow them to formulate and intimate a complaint to the Respondent. A complaint was intimated to the Respondent. Eventually after a lengthy delay, as a result of the Respondent failing to reply to the repeated requests made of him by the Complainers to answer their enquiry, the Council of the Law Society made a determination that the Respondent had failed to provide an adequate professional service to his client, the said Mr A.

3. On 31st May 2002 the Council determined in terms of Section 42A(2)(a)(ii) of the Solicitors (Scotland) Act 1980 that the fees and outlays to which the Respondent was entitled should be abated by the sum of £400 exclusive of VAT and directed that the Respondent in terms of Section 42A(3) of the said Solicitors (Scotland) Act 1980 should refund to the said Mr A the sum required in order to comply with the terms of that determination. By letter dated 17th June 2002 the determination of the Council was intimated to the Respondent. Eventually the Respondent by letter dated 22nd October 2002 produced a fee note in respect of the work carried out by him in accordance with the instructions issued by Mr A. In terms of that fee note the Respondent restricted his fee to that of £600 with accrued VAT thereon of £105, producing a total of £705. From that amount he deducted (a) a payment to account of £400, (b) a payment due in respect of the determination by the Law Society of Scotland of £400.

The total deductions amounted to £800 leaving a balance due to Mr A of £95. By cheque dated 22nd October 2002 the Respondent forwarded the sum of £95 to the said Mr A. The Respondent has failed to properly implement the determination of the Council of the Law Society which was to abate his fee by £400 exclusive of VAT. If he had complied with the determination of the Council then his fee initially would have been restricted to that of £200 plus VAT thereon of £35 giving a total of £235 and not £705. Thereafter having regard to the amount paid to account by Mr A to the Respondent, the Respondent would therefore have been obliged to make payment to Mr A of the sum of £165 and not £95. Accordingly there is a balance outstanding of £70 due by the Respondent to the said Mr A which still has to be paid in order to comply with the determination of the Council.

4. The discrepancy in the accounting by the Respondent was brought to his attention by letter dated 5th March 2003. The Complainers requested that the Respondent clarify the position in respect of the accounting process. This letter was intimated to the Respondent by recorded delivery. No response was received. A reminder was intimated by letter dated 24th March 2003. No response was received. A further reminder was intimated by letter dated 14th April 2003 which indicated to the Respondent that the matter would be dealt with by the Council and that he should, if he so wished, make representation. As at 10th July 2003 no response had been received from the Respondent. No payment has been forthcoming from the Respondent to settle the outstanding balance due to the said Mr A.

5. **Mr B**

On 31 January 2003 the Council of the Law Society of Scotland made a determination in terms of Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client, Mr B. The Council of the Law Society of Scotland further determined that the Respondent should pay to the said Mr B the sum of £300 by way of compensation.

6. By recorded delivery on 9th May 2003 the Council of the Law Society of Scotland wrote to the Respondent intimating the determination and providing him with a copy thereof and seeking confirmation within 21 days of the steps which he had taken to comply with the determination. On 9th May 2003 the Council of the Law Society of Scotland again wrote to the Respondent noting that the determination had been issued to the Respondent on 20th February 2003 and that the Respondent had not appealed the determination. They again called upon the Respondent to provide confirmation to the Complainer of the steps which the Respondent had taken to implement the Council's determination and that within 21 days of the date of that letter. Said letter dated 9th May 2003 was a notice in terms of Section 42(B) of the Solicitors (Scotland) Act 1980. No explanation of the steps which had been taken by the Respondent to comply with the direction has been received by the Complainers in respect of the determination and no appeal has been lodged by the Respondent. No payment has been made by the

Respondent to Mr B and the Respondent has not complied with the determination.

7. **Messrs W & J Reid on behalf of Mr C**

On behalf of their client, Mr C, a letter of Complaint was intimated to the Complainers by Messrs W & J Reid. The Complainers obtained sufficient information from the said Messrs W & J Reid to allow them to formulate the basis of a Complaint. A letter intimating the Complaint was sent to the Respondent on 4th April 2003. This correspondence was ignored by the Respondent. Reminders were intimated to the Respondent which once again were ignored. By recorded delivery statutory notices in terms of Section 15(2)(i)(i) and Section 42C of the Solicitors (Scotland) Act 1980 were intimated upon the Respondent on 23rd May 2003. The Respondent did not reply to these statutory notices. As a result of the failure on the part of the Respondent to reply to the enquiries made of him by the Complainers, the Complaint intimated to them on behalf of the member of public remains outstanding.

8. **Miss D**

Miss Miss D consulted the Respondent in connection with divorce proceedings which were ongoing in the English jurisdiction. By letter dated 13th March 2002 she invoked the aid of the Complainers concerning a failure on the part of the Respondent to correspond with her regarding progress in relation to the English divorce action, failure on the part of the Respondent to correspond with Hull County Court and to advise and complete the appropriate paperwork in respect of the

English divorce proceedings. Eventually sufficient information was obtained to allow the Complainers to consider the terms of the Complaint. On or about 30th May 2003 the Council of the Law Society of Scotland made a determination in terms of Section 42(A)(2) of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client. They determined that any professional account for which the Respondent would be entitled would be reduced by £150 plus VAT and further that the Respondent should pay to Miss D the sum in total of £500 by way of compensation. By recorded delivery dated 19th June 2003 the determination of the Council was intimated to the Respondent. A reminder was intimated to the Respondent by letter dated 17th July 2003. By recorded delivery on 31st July 2003 a statutory notice in terms of Section 42(B) of the Solicitors (Scotland) Act 1980 was intimated to the Respondent calling upon him to provide confirmation that the determination issued by the Council had been complied with. No response was received. A further reminder was intimated on 29th August 2003. The Complainers have received no explanation of the steps taken by the Respondent comply with the direction nor has the said Miss D received the compensation provided for by the Complainers.

9. **Scottish Legal Services Ombudsman**

Mrs L M Costelloe Baker is appointed the Scottish Legal Services Ombudsman. Her office is based at 17 Waterloo Place, Edinburgh. At the instance of a Mr A, she investigated a Complaint which related to the manner in which the Law Society dealt with an original Complaint by Mr A made against the Respondent. Having made enquiries she issued a report dated 29th August 2002. In terms of that report she herself made a Complaint concerning the Respondent. In particular she complained about an advertisement of the Respondent, prominently displayed in the Yellow Pages Telephone Directory, indicating that the Respondent was in a position to provide advice on matters of English Law. In the opinion of the Ombudsman this advertisement was inaccurate and misleading. Having obtained sufficient information the Complaint was intimated to the Respondent. It has transpired that the Respondent is not a qualified English solicitor. As such he is not in a position to properly offer advice on matters relating to English Law. The advert published upon the instruction of the Respondent claims an ability on the part of his firm to provide advice on English Law. The Respondent possesses a degree in English Law from University. This degree is of some age. The Respondent accepts that he has not undergone academic or practical post graduate training in English Law nor has he attended any form of refresher or update course. The general public when considering the advert placed by the Respondent could be misled into believing that what was on offer by Mr Gray in connection with his professed expertise in the English legal jurisdiction was well in excess of that which Mr Gray could, given his

qualifications, reasonably provide. In addition the presentation of such an advert would secure for the Respondent a material advantage over other firms by professing an apparent ability to deliver a service not available to other firms. The Respondent in placing the advertisement acted in a fashion designed to deliberately mislead the extent of his abilities insofar as matters of law within the English jurisdiction is concerned.

10. Having obtained sufficient information from the Ombudsman, a Complaint was intimated to the Respondent regarding these matters. This letter intimating the Complaint to the Respondent was ignored. Further reminders were sent by the Complainers to the Respondent which were ignored. By recorded delivery statutory notices in terms of Section 15(2)(i)(i) and Section 42C of the Solicitors (Scotland) Act 1980 were intimated to the Respondent. Only when these were received by the Respondent did he make a limited response to the enquiries made of him by the Complainers. The delay by the Respondent in replying to the enquiries made of him by the Complainers, frustrated the Complainers in the process of their investigations.

11. **Mr E**

Mr E consulted the Respondent in connection with an action for divorce. By letter dated 2nd February 2000 he invoked the aid of the Complainers regarding the manner in which the Respondent had dealt with instructions received from him. The Complainers obtained sufficient information from Mr E to allow

them to formulate and intimate a Complaint to the Respondent. A Complaint was intimated to the Respondent. Eventually after sundry procedure on 25th July 2003 the Council made a determination that the Respondent had failed to provide an adequate professional service to his client, Mr E. The Council determined in terms of Section 42A(ii)(d) of the Solicitors (Scotland) Act 1980 that the Respondent paid to Mr E the sum of £200 by way of compensation. The decision of the Council was intimated to the Respondent on 21st August 2003. A formal notice in terms of Section 42(B) of the Solicitors (Scotland) Act 1980 was intimated by recorded delivery to the Respondent on 1st October 2003. Said notice called upon the Respondent to explain what steps he had taken to implement the determination of the Council. No explanation of the steps which had been taken by the Respondent to comply with the direction has been received by the Complainers. No Appeal has been lodged by the Respondent. No payment has been made by the Respondent to Mr E. The Respondent has not complied with the determination.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in respect of:
- (1) His failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society concerning the complaints by Mr A, Messrs W & J Reid and the Scottish Legal Services Ombudsman.
 - (2) His causing or permitting to be published an advert in the Yellow Pages telephone directory, which was deliberately inaccurate or misleading in that it suggested that his firm was

competent to provide professional advice on matters of English Law when the Respondent well knew that his firm was not competent to give advice on matters of English law, contrary to Article 7 of the Code of Conduct for Solicitors Holding Practising Certificates, issued by the Law Society in 1989.

8. Having considered the foregoing circumstances, the Tribunal found that the Respondent had failed to comply with the determinations and directions given by the Council of the Law Society of Scotland under section 42 A of the Solicitors (Scotland) Act 1980 in respect of Mr A , Mr B, Miss D and Mr E within the respective periods specified ; and the Tribunal resolved to make orders in terms of section 53 C(2) of the Solicitors (Scotland) Act 1980.

9. Having heard the Solicitor for the Respondent in mitigation and having noted the previous finding of professional misconduct, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 14 January 2004. The Tribunal having considered the Complaint dated 30 October 2003 at the instance of the Council of the Law Society of Scotland against Michael Charles Gray formerly of 6 Clifton Terrace, Edinburgh and now of 115 Morrison Street, Edinburgh; Find the Respondent guilty of Professional Misconduct in respect of his failure to respond timeously, openly and accurately to the reasonable enquiries made of him by the Law Society and his failure to act in accordance with Article 7 of the Code of Conduct for Solicitors Holding Practising Certificates issued by the Law Society of Scotland in 1989 by causing or permitting to be published an advert in the Yellow Pages which was deliberately inaccurate or misleading; Censure the Respondent and Fine him in the sum of £3000 to be forfeit to Her Majesty; Find that the Respondent has failed to comply with the determinations and

directions given by the Council of the Law Society of Scotland under section 42 A of the Solicitors (Scotland) Act 1980 within the periods specified; Direct that Orders be issued under section 53C of the said Act;

Find the Respondent liable in the expenses of the Complainers and in the expenses of the Tribunal as the same may be taxed by the auditor of the Court of Session on an agent and client indemnity basis in terms of Chapter Six of the Law Society's Table of Fees for general business; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed) G. Fraser Ritchie

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

The Respondent was not present or represented at the hearing. The Tribunal heard evidence from the Clerk that the Complaint had been served on the Respondent by recorded delivery on 13 November 2003 and the Notice of Hearing had been served on the Respondent by recorded delivery on 10 December 2003 and neither had been returned. No Answers had been lodged by the Respondent. The Tribunal also heard evidence from Mr Reid, the Fiscal, who stated that the Respondent had telephoned him in early December to discuss the Complaint which gave Mr Reid the impression that the Respondent had received service of the Complaint. Mr Reid further stated that he had received a letter dated 12 December 2003 from the Respondent in connection with the case, apologising for not having time to discuss matters and stating that the Respondent was going on holiday until the middle of February.

The Tribunal was satisfied that the Respondent had received the Complaint. The Respondent had chosen not to lodge Answers and to go away on holiday without advising the Tribunal. It is also probable that the Respondent had received the Notice of Hearing prior to him writing his letter of 12 December 2003 to the Fiscal. The Tribunal was satisfied that the Notice of Hearing had been properly served in terms of the Tribunal Rules and accordingly the Tribunal agreed to proceed in the absence of the Respondent.

The Tribunal heard evidence from Fay Short, case manager with the Law Society. Miss Short stated that the Respondent was still operating from his office in Morrison Street but had ceased to practise as a solicitor at the beginning of November 2003. Miss Short referred to the productions lodged in connection with Mr A and stated that the Law Society had made a determination that the Respondent had provided inadequate professional service to Mr A and ordered that his fees be abated by £400. This was intimated to the Respondent. The respondent had deducted the £400 after the VAT had been charged, which resulted in £70 still being outstanding due by the Respondent to Mr A in terms of the determination. Despite this being intimated to the Respondent he had not made payment of the remaining £70 and accordingly the determination had still not been complied with.

In respect of Mr B, Miss Short explained that the Law Society had found that the Respondent had provided an inadequate professional service and had made a determination that the Respondent waive his fees and pay £300 compensation to Mr B. This had been intimated to the Respondent and a statutory notice had been sent but there had been no response from the Respondent and the compensation due to Mr B had not been paid.

In connection with Mr C, the Law Society had been unable to investigate the complaint because the Respondent did not reply to their letters or the statutory notices sent. This resulted in the Law Society being unable to respond to the enquiry in connection with the complaint.

In connection with Miss D, Miss Short stated that the Law Society made a finding of inadequate professional service and determined that the Respondent's fees should be reduced by £150 plus VAT and that the Respondent should pay compensation to Miss D of £500. This was intimated to the Respondent and reminders and statutory notices were sent but the determination had still not been complied with and the compensation had not been paid.

Miss Short explained that the Ombudsman had become involved in Mr A's case as Mr A had been unhappy with the Law Society's handling of the case and had referred it to the Ombudsman. The Ombudsman had looked at the Law Society's files and had made a complaint with regard to the Respondent's advert in the Yellow Pages. She was of the opinion that his statement in his advert that he could advise on English Law was inaccurate and misleading. Miss Short referred the Tribunal to the Yellow Pages from 2000/2001, 2001/2002 and 2002/2003, all of which contained an advert in respect of the Respondent's firm stating that he was able to advise on Scottish and English law. Miss Short stated that this complaint was intimated to the Respondent but he did not reply until a number of reminders and statutory notices had been sent, when he stated that he had a degree in English law and read periodicals and books on English law to update himself and that he was only acting as an agent in respect of English law. The Law society requested more information and after reminders and statutory notices the Respondent sent a letter stating that he had obtained his degree in English law in 1987 and had never held a practising certificate in England and Wales.

Miss Short referred the Tribunal to the help form received from Miss D from which it was clear that Miss D had instructed the Respondent to deal with her divorce proceedings in England and that she perceived that he was able to act as an English lawyer. Miss Short also referred the Tribunal to the fee note in respect of Mr A which covered his acting for Mr A in an English divorce action.

In connection with Mr E, Miss Short stated that the Law Society had made a determination of inadequate professional service and ordered that the Respondent pay £200 compensation. This was intimated to the Respondent and reminders and statutory notices were sent but the determination had not been complied with. Miss Short also stated that the Respondent had not provided the Law Society with an explanation as to why he delayed in responding to their enquiries with regard to the complaint from the Ombudsman.

SUBMISSIONS FOR THE COMPLAINERS

Mr Reid requested the Tribunal to make the necessary Orders under Section 53C(2) in respect of Mr A, Mr B, Miss D and Mr E. With regard to the complaints by Mr C, Miss D and the Ombudsman, Mr Reid referred to the numerous letters and statutory notices which had been ignored by the Respondent. In connection with the advert which appeared in the Yellow Pages, Mr Reid stated that the Respondent displayed or caused to be displayed this advert, indicating that his firm was able to provide a service which he was neither qualified for nor insured for. The advert gave the Respondent an unfair competitive advantage over other firms of solicitors. Mr Reid submitted that it could be implied from the fee note produced in connection with the work carried out for Mr A and from the help form submitted from Miss D, that the Respondent's clients had a perception that he was able to provide the services of an English lawyer.

DECISION

The Tribunal were particularly concerned by the placing of the advert in the Yellow Pages by the Respondent which suggested that his firm was competent to provide professional advice on matters of English law when the Respondent was not a qualified English lawyer. The Tribunal noted that the master policy would not cover advice on matters of English law. The placing of the advert in the Yellow Pages clearly gave the Respondent's firm a competitive advantage and the Tribunal found that it was deliberately inaccurate and misleading in that it suggested that the Respondent's firm was competent to provide professional advice on matters of English law when the Respondent knew that his firm was not competent to give professional advice on matters of English law. Although the Respondent had an English law degree this was not a recent qualification and the Respondent had never held a practising certificate to practise in England and Wales. The Tribunal took account of the letters of explanation from the Respondent, to the effect that he kept himself up to date by reading cases and English legal materials but this did not mean that the Respondent was entitled to hold himself out as able to give advice on matters of English law. The Tribunal did not accept that the Respondent was only purporting to be an agent for English lawyers.

The Tribunal were also concerned by the Respondent's failure to reply to the Law Society in connection with the complaints by Messrs W & J Reid and the Scottish Legal Services Ombudsman. Failure on the part of a solicitor to co-operate hampers the Law Society in the performance of their statutory duty and is prejudicial to the reputation of the legal profession. The Tribunal noted that the Respondent had previously been found guilty of professional misconduct in respect of his unreasonable delay in responding to reasonable enquiries made of him by the Law Society concerning the affairs of clients, one of whom was Miss D. The Tribunal accordingly did not make a further finding against the Respondent in respect of his delay in replying to enquiries in respect of Miss D.

In the previous findings of the Tribunal of 29 May 2003, the Respondent had been Censured, fined £3000 and had his practising certificate restricted for a period of 10 years. The Tribunal were of the view that the public would be protected by the

restriction already imposed. However, in view of the serious view that the Tribunal take of the Respondent's misleading advert, the Tribunal imposed a further fine of £3000.

The Tribunal further found that the Respondent failed to comply with the determinations and directions of the Law Society in connection with Mr A, Mr B, Miss D and Mr E and the Tribunal made orders under Section 53C(2) of the Solicitors (Scotland) Act 1980 in connection with each of these matters. The Tribunal made the usual order with regard to publicity and expenses.

Chairman