

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

FINDINGS

in Complaint

by

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

against

**DAVID RICHARD BLAIR
LYONS, Solicitor, Messrs. Lyons
Laing & Co., Solicitors, 5 George
Square, Greenock.**

1. A Complaint dated 26 May 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, David Richard Blair Lyons, Solicitor, Messrs. Lyons Laing & Co., Solicitors, 5 George Square, Greenock (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 19 August 2004 and notice thereof was duly served on the Respondent.

4. The hearing took place on 19 August 2004. The Complainers were represented by their Fiscal Mr Sean Lynch, Solicitor, Kilmarnock. The Respondent was present and represented by Mr W Macreath, Solicitor, Glasgow.
5. A fresh Complaint dated 12 August 2004 was tabled on the day of the Tribunal hearing and a Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the new Complaint were admitted. No evidence was led.
6. The Tribunal found the following facts admitted or proved:-
 1. The Respondent is a Solicitor enrolled in Scotland. The Respondent was born on 6th April 1951. He was admitted as a solicitor on 18th and enrolled on 28th both days of November 1975. He is a partner in the firm of Messrs. Lyons Laing & Co., Solicitors, 5 George Square, Greenock.
 2. **MR A, DECEASED**
Mr A died intestate at Ayr on 9th February 1997. On 13th September 2000 Messrs. Raeburn Christie, Solicitors, Aberdeen acting on behalf of Mrs. B, the daughter of the deceased wrote to the Client Relations Office of the Complainers intimating a complaint against the Respondent, in respect of his acting in the administration of the estate of the late Mr A.

3. During the period of the Respondent's acting funds were disbursed, and in addition the Respondent took fees of £1200 plus VAT, despite the fact that no executor had been appointed to deal with the estate.

4. Following the letter of 13 September 2000 of Messrs. Raeburn Christie to the Complainers in relation to the complaint, the Complainers wrote to the Respondent on 11th October 2000 (the delay occasioned by an interim referral by the Complainers to the Accountant to the Law Society) with a copy of the letter from Messrs. Raeburn Christie and asking for his comments within fourteen days. No response was forthcoming. A reminder was sent to the Respondent on 22nd October 2000. The Respondent spoke to an employee of the Complainers on 2nd November 2000 stating that the matter was not straight forward, that there were issues of client confidentiality involved and there was also a court action about to be raised at the instance of Mrs B. The Respondent concluded by saying that he would write to the Complainers setting out his position in the matter. Nothing was heard from the Respondent and the Complainers sent a further reminder on 24th November 2000 and a reminder by first class recorded delivery on 5th December 2000. Thereafter the Complainers wrote to the Respondent again on 21st December 2000 advising him that if they did not receive a response then they would require to consider bringing his failure to respond to the attention of a Complaints committee at its meeting on 11th January 2001.

5. The Committee did consider the Respondent's failure to respond to the Complainers' correspondence at its meeting on 11th January 2001 and recommended that a

notice in terms of Section 15(2)(1)(1) of the Solicitors (Scotland) Act 1980 be served on the Respondent.

6. The Complainers wrote to the Respondent on 24th January 2001 advising him of the Committee's recommendation that a Section 15 notice be served on him which would be considered by the Complainers' Council meeting on 28th February 2001 and asking him for any representations by 9th February 2001. Mr. Yelland of the Complainers also wrote to the Respondent on 26th January 2001 setting out the position in relation to the complaint and advising that matters were now extremely urgent. A telephone message was received on 30th January 2001 from the Respondent's secretary stating that the Respondent passed on his apologies for not responding to the complaint as he had been away on business the previous week. Through his secretary the Respondent undertook to reply by 9th February 2001.

7. The Respondent at this point consulted Mr. William Macreath, Solicitor, Glasgow. Mr. Macreath wrote to the Complainers on 23rd February 2001 advising that he had been in touch with Raeburn Christie and court proceedings were to be raised. He asked the Complainers to hold the complaint in abeyance pending the court proceedings being resolved. The Complainers responded to Mr. Macreath on 13th March 2001 noting the position regarding the court action, but asking for his representations in relation to the Respondent's failure to respond to the Complainers' correspondence.

8. Mr. Macreath wrote to the Complainers on 20th March 2001 requesting copies of previous correspondence so that he could consider the failure to respond to the complaint.
9. At their meeting on 29th March 2001 the Council sanctioned the service of the first part of the Section 15 notice which was duly served on 11th April 2001 by recorded delivery.
10. Mr. Macreath wrote to the Complainers by letter dated 10th April 2001 advising he was taking instructions in the matter of a Judicial Review of the decision to serve the first part of the Section 15 notice.
11. On 24th April 2001 the Respondent's secretary telephoned the Complainers and indicated he was looking into the matter and that he would be in touch.
12. On 15th March 2001 Mr. Yelland of the Complainers wrote to Mr. Macreath regarding the difficulty in obtaining responses from the Respondent.
13. The complaint came before the Complainers' committee at its meeting on 4th May 2001 in relation to further failures to respond. At that time the Committee was of the view that it was not necessary to recommend to Council that the second part of the Section 15 notice required to be served as a response had now been received from the Respondent's, solicitor, Mr. Macreath. The Committee recommended no further action in relation to the Respondent's failure to respond to the Complainers' correspondence at that time.

14. The Complainers made enquiry of Messrs. Raeburn Christie on 6th June 2001 regarding the position of the court action and Messrs. Raeburn Christie responded on 8th June 2001 advising that it would appear that they would require to raise proceedings against the Respondent to obtain an accounting. Further correspondence took place with Messrs. Raeburn Christie and Mr. Macreath regarding whether or not the raising of the court action would affect the Complainers' investigation. On 25th June 2001 Messrs. Raeburn Christie wrote stating that Mrs. Duguid wished the Complainers to proceed with an investigation. A list of complaints was drafted and sent out to Messrs. Raeburn Christie on 19th July 2001 with a request for further clarification of certain matters. Mr. Macreath was advised of the position on 19th July 2001.
15. A letter was received from Mr. Macreath on 16th August 2001 indicating that he had requested an early meeting with the Respondent.
16. The Complainers director of client relations wrote to Mr. Macreath on 20th August 2001 enquiring whether or not he had formal instructions from the Respondent to progress matters.
17. An amended list of complaints was sent to Messrs. Raeburn Christie on 14th September 2001. Mr. Macreath was advised of the position on the same date. The complaints were intimated to the Respondent on 4th October 2001 and at the same time a copy of the list of complaints and letter was sent to Mr. Macreath.

18. Mr. Macreath wrote on 17th October 2001 advising that proceedings had now been raised by Messrs. Raeburn Christie against the Respondent as an individual. The Complainers wrote to Mr. Macreath on 5th November 2001 reminding him that the Client Care Committee proposed a new policy whereby the Complainers would investigate complaints although there were proceedings ongoing. The Complainers received confirmation from Messrs. Raeburn Christie on 7th November 2001 that they would wish the complaint to proceed notwithstanding the court action.
19. The Complainers wrote to Mr. Macreath on 13th November 2001 with a copy of the letter from Messrs. Raeburn Christie. The Complainers asked for the Respondent's response within fourteen days. A reminder was sent on 29th November 2001 and a further reminder was sent on 19th December 2001. Mr. Macreath wrote to the Law Society on 21st December 2001 advising that he had written to the Respondent in a final attempt to obtain instructions from him.
20. In the absence of any progress the Complainers wrote to the Respondent on 10th January 2002 requesting a response within seven days otherwise the Complainers would require to consider intimating a further complaint in relation to his failure to respond to the Complainers' correspondence. That complaint was intimated on 13th February 2002 by the Complainers.
21. The Complainers received a letter from the Respondent dated 16th February 2002 indicating that he did not know there was any outstanding correspondence in

relation to the complaint and stating (a) that he thought that Messrs. Levy & McRae were dealing with it for him, (b) that he had been unaware that Mr. Macreath was waiting instructions and (c) that he would arrange to ensure that Mr. Macreath was instructed without further delay. The Complainers wrote to the Respondent on 7th March 2002 stating it was a matter for himself whether he dealt with the complaint himself or continued to instruct Mr. Macreath. In any event they required a response within the next seven days. A reminder was thereafter sent by the Complainers on 28th March 2002 requesting a response to the intimation of the complaints together with his firm's file within a seven day period. On 17th April 2002 the Complainers served a Section 42C Notice calling upon the Respondent to produce all books, accounts, deeds, securities, papers and other documents in his possession or control relating to the late Mr A's estate within a twenty one day period. They also asked for an explanation regarding his delay in responding to the complaint. No response was received and the Complainers therefore served the second part of the Section 15 notice condescended upon on the Respondent on 16th May 2002.

22. The substantive issues in relation to this matter have been resolved.

23. **MS C .**

In 1997 Ishbel Brown instructed a solicitor in Messrs. Lyons Laing (not the Respondent) to submit an offer for a flatted dwellinghouse at Property D. Messrs. Lyons Laing did so. The Respondent acted on behalf of the seller, Company E. After some negotiations between

the Respondent and the other solicitor Messrs. Lyons Laing decided that there was potentially a conflict of interest in them acting. Thereafter, from about October 1997, Ms C was represented by Messrs. Murray & Co., Solicitors, Glasgow. The transaction settled on 6th November 1997. At settlement there remained a charging order in favour of the local authority constituted over the property which had not at that time been discharged. The Respondent granted a letter of obligation dated 6th November 1997 in favour of Murray & Co. as agents for Ms C in which he undertook to deliver a discharge of the charging order within twenty one days of 6th November 1997. The Respondent failed to deliver the discharge. As the discharge was still by then outstanding Messrs. Murray & Co. acting on her behalf wrote a letter of complaint to the Complainers dated 1st February 1999. The Complainers wrote to the Respondent on 17th February 1999. They enclosed a copy of Messrs. Murray & Co.'s letter and asked the Respondent to advise of the steps which he was taking to resolve matters. The Respondent acknowledged the letter on 24th February 1999 and promised an early response. On 22nd March 1999 the Complainers who had not heard further from the Respondent sent a reminder to him. Having received no response they sent a further letter to the Respondent on 28th April 1999. As at this date the Respondent was temporarily absent from business due to his health. He wrote to the Complainers on 26th May 1999 setting out the history of the case and provided an update on 17th June 1999. In general terms the Respondent maintained that responsibility for the delay rested with the local authority. On 8th July 1999 the Complainers wrote further to the Respondent and on

16th July 1999 the Respondent wrote to the Complainers indicating that "some limited progress" had been made. This was acknowledged by the Complainers on 31st July 1999. The Complainers again wrote to the Respondent on 13th August 1999 and on 8th September 1999 and a received a response dated 9th September 1999. The Complainers wrote again on 16th September 1999 and having heard nothing further (the Respondent having indicated in his letter dated 9th September 1999 that he would confirm the position within seven days) the Complainers again wrote to the Respondent on 22nd October 1999. On 25th October 1999 the Respondent wrote a letter to the Complainers in which he asserted that the matter was being resolved. On 29th October 1999 the Complainers wrote to the Respondent noting the position. On 2nd December 1999 the Complainers wrote to the Respondent requesting a progress report. In the absence of a response from the Respondent they sent a reminder on 22nd December 1999; a further reminder on 12th January 2000; a further reminder on 2nd February 2000; and in early February 2000 a case manager within the Complainers Client Relations Department spoke to the Respondent who indicated that the case should be resolved by the end of February 2000. On 8th March 2000 the Complainers wrote to the Respondent requesting a progress report. As they did not receive any response the Complainers wrote to the Respondent on 28th April 2000 by recorded delivery post. The Respondent wrote to the Complainers on 9th May 1999 with an explanation of where matters stood at that time and indicated that the case should be resolved "within a matter of weeks". The Complainers acknowledged this letter on 10th May 2000. On 19th May 2000 the Complainers wrote to the Respondent

enclosing a copy of a letter from Messrs. Murray & Co. which indicated that Ms C wanted to remortgage her house and clearly could not do so until the charging order had been discharged. The purpose of writing was to emphasise to the Respondent that it was imperative steps were taken to discharge the charging order forthwith. On 6th June 2000 a reminder was sent to the Respondent requesting his response within seven days. On 15th June 2000 the Complainers wrote to the Respondent by recorded delivery post. In this letter, as in their letter dated 28th April 2000 the Complainers drew to the attention of the Respondent the provisions of Sections 15 and 42C of the Solicitors (Scotland) Act 1980. On 21st June 2000 Mr. Nicol who was then a partner in the Respondent's firm acknowledged the letter and stated that the Respondent was abroad on holiday, but was due to return to business on 26th June. A reminder was sent to the Respondent by the Complainers on 29th June 2000. In the absence of a response a further letter was sent to the Respondent on 6th July 2000 and on 6th July 2000 the Respondent wrote to the Complainers indicating that settlement appeared to be only days away from completion.

24. On 18th July 2000 the Complainers again wrote to the Respondent requesting a response within seven days. On 14th July 2000 the Respondent wrote to the Complainers explaining that there were difficulties with their client's finance arrangements (the finance being necessary to pay off the local authority to obtain a discharge of the charging order). The Respondent enclosed copies of correspondence bearing this out. The Complainers acknowledged this on 28th July 2000 and requested that they be kept informed. On 15th

August 2000 the Respondent wrote to the Complainers indicating that the refinancing was on the point of settling. The Complainers acknowledged this on 18th August 2000. The Complainers wrote to the Respondent on 30th August 2000 requesting a response within seven days. As none was forthcoming the Complainers again wrote to the Respondent on 14th September asking to hear from him by return. On 15th September 2000 the Respondent wrote to the Complainers indicating that delays in settlement were being caused by the local authority. On 25th September 2000 the Complainers wrote again to the Respondent reminding him of the urgency of concluding matters. Having heard nothing further from the Respondent the Complainers again wrote to him on 3rd October 2000, on this occasion eliciting a response dated 4th October 2000 which continued to lay responsibility for the delay at the door of the local authority. On 13th October 2000 the Complainers acknowledged this letter. They sent a reminder on 8th November requesting a response within fourteen days. They sent a further reminder on 24th November 2000 requesting a response within seven days. On 5th December 2000 the Complainers wrote to the Respondent by recorded delivery post again reminding him of the provisions of Sections 15 and 42C of the 1980 Act. On 19th December 2000 the Complainers wrote to the Respondent and advised him that the failure to respond to correspondence would be considered by a Complaints Committee. A committee of the Complainers met on 11th January 2001 and recommended that a notice in terms of Section 15(2)(i)(i) of the 1980 Act be served upon the Respondent. The Complainers advised the Respondent of this recommendation by letter dated 24th January

2001. On 26th January 2001, the Complainers' Director of Client Relations wrote to the Respondent referring to a conversation which he had had with the Respondent on 11th January 2001 and reinforcing the necessity of the matter being dealt with. The Respondent caused a member of his staff to telephone the Client Relations Office of the Complainers on 30th January 2001 apologising for his earlier failure to respond to matters. On 8th February 2001 the Respondent wrote to the Complainers with an updated report of matters and apologising for his failure to deal adequately with earlier correspondence. On 19th February 2001 the Complainers wrote to the Respondent requesting an update. Having heard nothing the Complainers again wrote to the Respondent on 9th March 2001 requesting a response within seven days. On 29th March 2001 the council of the Complainers determined that a Section 15 Notice be served upon the Respondent forthwith and this was done by recorded delivery post on 11th April 2001. Thereafter the Complainers were advised that the Respondent had instructed solicitors to deal with this and other matters on his behalf and the Complainers wrote to the solicitors on 15th May 2001. As at 15th June 2001 however the Respondent had done nothing to respond to the Section 15 Notice issued to him in respect of the complaint by Ms C and the Complainers accordingly wrote again to the Respondent's solicitors on 15th June 2001. Immediately prior to this however the Complainers received a fax from the solicitors dated 14th June 2001. There followed correspondence between the Complainers and these solicitors and in the absence of any substantive response, the solicitors wrote to the Complainers on 16th August 2001 saying that they still awaited instructions. On 17th October 2001 the

solicitors wrote to the Complainers in relation to the Ms C complaint and other matters. They indicated that the Respondent would himself settle the sums in dispute with the local authority at the end of November 2001. On 18th December 2001 the solicitors wrote to the Complainers indicating that they awaited instructions from the Respondent and they wrote in similar terms on 11th January 2002. On 13th February 2002 the Complainers formally intimated a complaint to the Respondent in respect that he had failed to answer Law Society correspondence and giving him fourteen days to reply. On 15th February 2002 the Respondent's solicitors who had received copies of the correspondence between the Complainers and the Respondent wrote to the Complainers. They were still without instructions. Eventually on 26th February 2002 the Respondent wrote to the Complainers a letter in which he maintained that he thought that matters had been dealt with his on his behalf. On 14th March 2002 the solicitors advised the Complainers by letter that they had no instructions to deal with the complaint. Between 3rd April 2002 and 20th May 2002 the Complainers corresponded directly with the Respondent. On 20th May 2002 they served a notice upon the Respondent in terms of Section 42C of the 1980 Act calling upon him to produce all documents in his possession in the transaction between Company E and Ms C relative to Property D.

25. The complainers determined that in the particular circumstances of the case the failure to implement the Letter of Obligation did not amount to professional misconduct, but they expressed the view that it did amount to unsatisfactory conduct.

26. The substantive issues in relation to this matter have been resolved.

27. **MRS F**

Mrs. F was involved in an accident on 8th October 1994 while she was a passenger on a bus. The bus was struck by another vehicle and Mrs. F sustained injury. She instructed the Respondent's firm on 25th November 1994 and her claim for damages was thereafter handled by the firm. She applied for and was granted legal aid to pursue court proceedings, subject to payment to the Scottish Legal Aid Board of a contribution of £486. Sanction was granted by the Legal Aid Board for the employment of Junior Counsel in relation to the case. A proof was scheduled to take place within the Sheriff Court at Greenock on 19th and 20th November 1998. A tender was intimated two days before the proof was due to start. The tender was accepted. A motion was thereafter made on Mrs. F's behalf to have the case certified by the Sheriff as suitable for the employment of Junior Counsel, and for the certification also of a Dr. G, who was to be a witness for Mrs. F, as a skilled witness. Both parts of the motion were refused. On 23rd November 1998 the Respondent's firm wrote to Mrs. F a letter which included the following passage:-

"As you are aware, as part of the agreement the Defender will be meeting the legal expenses of Lyons Laing however Sheriff Young determined that the expenses of Counsel will not be met by the Defenders and therefore it shall be deducted from your award. Once the expenses of Lyons Laing have been calculated by our Accountants, a hearing will be set before the auditor of court at Greenock whereby court approval will be made of these expenses before they can be recovered from the Defender. In any event the

sums paid will be sent initially to the Scottish Legal Aid Board and after any relevant deductions are made the final figure will be sent to ourselves."

A cheque in respect of the principal sum was sent to Mrs. F on 3rd June 1999. The Respondent's firm received a cheque at around that time in the sum of £4,860.90 in settlement of their expenses as agreed with the Defender's solicitors. No part of this sum was forwarded to the Scottish Legal Aid Board.

28. On 13th January 2000 the Respondent's firm wrote to Mrs. F stating that there was an outstanding invoice in respect of counsel's fees in the sum of £1,380.63. The letter pointed out that Mrs. F was personally liable for this account. On 9th February 2000 the Respondent's firm wrote to Mrs. F enclosing a statement of account from Faculty Services and again asking for a remittance of £1,380.63 to settle. Mrs. F telephoned the Respondent's firm and stated that she had not received their letter dated 13th January 2000. Thereafter Mrs. F instructed Messrs. McClures, Solicitors, Greenock who between 18th April 2000 and 4th July 2000 corresponded with the Respondent's firm on the subject of why Mrs. F should be held liable for expenses. Messrs. McClures against wrote to Messrs. Lyons Laing on 12th July 2000 insisting that Mrs. F had not been made aware that counsel's fees would require to be met from the sums recovered. Further reminders were sent by Messrs. McClure & Co. to the Respondent's firm on 25th August and 6th December 2000 and 13th February 2001 all of which were unanswered by the Respondent's firm. In the meantime Mrs. F had complained to the Law Society of Scotland.

29. After the initial complaint was received the Complainers wrote to the Respondent on 17th January 2002 requesting his response to the complaint. By letter dated 30th January 2002 the Respondent set out his position. Since however this letter did not deal with all of the issues raised the Complainers wrote to him on 19th February 2002 explaining that they required the Respondent's response to the apparent failure to respond to correspondence from Messrs. McClures who were acting for Mrs. F, and the apparent breach of Section 4(3)(b) of the Legal Aid (Scotland) Act 1986 (failure to Pay the Expenses to the Legal Aid Board). In the absence of any response reminders were sent to the Respondent on 14th March and 15th April 2002. On 25th April 2002 the Respondent wrote to the Complainers. He stated that after an exhaustive search he had found the original papers, that there was now no-one within the firm who had been involved in dealing with the matter originally and requesting ten days to peruse the papers and formulate a response. No response was however sent by the Respondent. On 3rd May 2002 the Complainers formally intimated Mrs. F's complaint to the Respondent. On 28th May 2002 the Complainers sent a reminder to the Respondent. In the absence of anything further from the Respondent the Complainers on 19th June 2002 served notices upon the Respondent in terms of Section 15(2)(i) and Section 42C. The former required the Respondent to provide a response to the complaint and an explanation for his delay in replying, all within fourteen days of 19th June 2002 and the latter required the Respondent to produce, within twenty one days of 19th June 2002 all books, accounts, deeds, securities, papers and other documents in his

possession or control relating to Mrs. F. No response was received to either notice and on 16th July 2002 the Complainers again wrote to the Respondent and stated that the failure to respond to correspondence would be brought to the attention of the Complainer's council.

30. On 21st August 2002 solicitors instructed by the Respondent wrote to the Complainers advising that they had now been instructed to act on his behalf. An investigation of the complaint of Mrs. F thereafter took place according to the normal practices and procedures adopted by the Complainers.
31. The substantive issues in relation to this matter have been resolved.
32. **FACULTY SERVICES LIMITED**

Faculty Services Limited is responsible for the collection of all fees owed to Scottish counsel. On 25th September 1998 Faculty Services Limited wrote to the Complainers seeking their assistance in the recovery of fees which they maintained were due to counsel by the Respondent, in relation to matters which had arisen in the aftermath of the Orkney enquiry. This was first intimated to the Respondent by letter dated 1st October 1998. There followed various discussions and enquiries were made of counsel. During this period the Respondent maintained that he was not liable for counsel's fees, stating the counsel had been instructed by another firm, and that counsel had raised proceedings apparently without instructions. Faculty Services Limited contacted counsel who had been instructed to obtain clarification of the instructions

given to him. Further correspondence passed between the Complainers, the Respondent, and Faculty Services. The solicitor in the employment of the Respondent's firm who had dealt with the matter could not be traced either by the Respondent or by the Complainers. It appeared that initially the Respondent's firm had acted for two out of four clients who had an interest in the matter, and that eventually they had taken over acting for all four clients.

33. On 7th February 2001 the Respondent advised the Complainers that this firm would now accept liability for fees in respect of two clients only but they would nonetheless attempt to recover fees from the legal aid board in respect of all four clients. On 20th February 2001 Faculty Services advised the Complainers that there were in fact six fee notes outstanding rather than four. On 5th March 2001 the Complainers received copies of all six fee notes from Faculty Services Limited. By this time the Respondent had instructed Messrs. Levy & Macrae, Solicitors to deal with the complaint on his behalf. On 15th May 2001 the Complainers wrote to Messrs. Levy & Macrae to ascertain the Respondent's position about the outstanding fee notes. On 14th June 2001 Messrs. Levy & Macrae wrote to the Complainers indicating that they would seek instructions. On 9th October 2001 the Respondent himself wrote to the Complainers advising that one of the fees could be dealt with, a second related to work carried out on behalf of an insurance company where the insurance company were disputing liability to make payment on the basis that there was negligence by counsel in the way the case was handled, and indicating that of the remaining fees the Respondent accepted

liability for two but disputed the remaining two. On 17th October 2001 Messrs. Levy & Macrae wrote to the Complainers to say they understood that the Respondent's Edinburgh correspondent was dealing with Faculty Services Limited regarding the outstanding accounts. On 18th December 2001 Messrs. Levy & Macrae wrote to the Complainers indicating that they had no further instructions from the Respondent or his firm in relation to this matter.

34. On 13th February 2002 the complaint of Faculty Services Limited was intimated formally to the Respondent and copied to Messrs. Levy & Macrae. On 26th February 2002 the Respondent wrote to the Complainers indicating they were unaware that there was still outstanding correspondence in relation to this matter and also that he wished Messrs. Levy & Macrae to continue to represent him. On 12th March 2002 Messrs. Levy & Macrae wrote to the Complainers to say that despite reminders they had no further instructions from the Respondent. On 10th April 2002 the Respondent wrote to the Complainers. He again set out his position but concluded the letter by indicating that he now saw no alternative but to settle with Faculty Services Limited, any possible payment from the legal aid fund now being time-barred. He indicated he understood that if he did settle Faculty Services Limited would be prepared to withdraw their complaint, and he indicated that he would write again to the Complainers once he had effected settlement with Faculty Services Limited. On 1st July 2002 Faculty Services Limited confirmed that all six fee notes remained outstanding.

35. The substantive issues in relation to this matter have been resolved.

7. Having considered the foregoing circumstances the Tribunal found the Respondent guilty of Professional Misconduct in cumulo in respect of:

- (1) His persistent failure between 11th October 2000 and May 2002 to deal with correspondence from the Complainers in relation to the late Mr A's executry.
- (2) His breach of Rule 6(1) of the Solicitors (Scotland) Accounts Rules 1997 in respect of his intromission with funds and taking of fees from Mr A's executry while no executor had been appointed in relation to the estate.
- (3) His persistent failure between December 1999 and May 2002 to deal with correspondence from the Complainers in relation to Ms C.
- (4) His persistent failure between January 2002 and July 2002 to deal with correspondence from the Complainers in relation to Mrs F.
- (5) His failure to obtemper a statutory notice.
- (6) His persistent failure between February 2002 and September 2002 to deal with correspondence from the Complainers in relation to Faculty Services.

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

Edinburgh 19 August 2004. The Tribunal having considered the Complaint dated 12 August 2004 at the instance of the Council of the Law Society of Scotland against David Richard Blair Lyons, Solicitor Messrs Lyons Laing & Co., Solicitors, 5 George Square, Greenock; Find the Respondent guilty of Professional Misconduct in cumulo in respect of his persistent failure to deal with correspondence from the Law Society in relation to three clients and Faculty Services Ltd., his failure to obtemper a statutory notice and his breach of Rule 6(1) of the Solicitors (Scotland) Accounts Rules 1997; Censure the Respondent and Fine him in the sum of one thousand pounds to be forfeit to Her Majesty; 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 Three 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 but shall not include the name of the Respondent's clients or otherwise identify them.

(signed) G Fraser Ritchie

Chairman

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

IN THE NAME OF THE TRIBUNAL

Chairman

NOTE

On the morning of the Tribunal the Fiscal withdrew the Complaint dated 26 May 2004 and substituted a fresh Complaint. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the fresh Complaint were admitted. No evidence was led.

SUBMISSIONS FOR THE COMPLAINERS

Mr Lynch clarified that although it was averred that the Respondent took fees when there had been no executor appointed, it was not suggested by the Complainers that the fees were excessive or that the Respondent was not entitled to them. Mr Lynch however stated that it was a breach of Rule 6 of the Accounts Rules to take the fees prior to an executor being appointed as the Respondent had no authority to intromit with funds because there was no client in terms of Rule 6(1)d. The remainder of the Complaint related to failure to respond to the Law Society's enquiries in respect of a number of matters. Mr Lynch confirmed that the substantive matters had all been resolved.

SUBMISSIONS FOR THE RESPONDENT

Mr Macreath outlined the Respondent's personal circumstances and advised the Tribunal of the Respondent's past service on the Law Society Council and the Respondent's previous good reputation and success. Mr Macreath explained that the Respondent's firm had at one time had seven partners but now had only two. During the period from April 1999 to 2001 the Respondent was going through difficulties in both his personal and working life. The undue stress on the Respondent resulted in him becoming unwell and he was off work during various periods between 1999 and 2001. The Respondent and his wife were separated but the Respondent's wife had become unwell and died in June 2001 and the Respondent had responsibility for looking after their three children. Mr Macreath referred the Tribunal to the report from the Respondent's psychiatrist which indicated that the Respondent was ill during the period when he failed to respond to the Law Society. Mr Macreath took the Tribunal through the various references provided on the Respondent's behalf from well known and respected members of the legal profession.

Mr Macreath explained that all the substantive matters referred to in the Complaint had been resolved by the Respondent and the Respondent was only before the Tribunal in respect of his failure to respond to the Law Society's enquiries in respect of these matters and for his intromitting with funds prior to appointing an executor, which was only a technical breach of Rule 6. Mr Macreath also pointed out that the Respondent had replied to some of the Law Society's enquiries but accepted that he did not respond fully.

Mr Macreath asked the Tribunal to mitigate any punishment given that the Respondent had resolved the difficulties with his practice and had fully co-operated with the Law Society and entered into a Joint Minute. Mr Macreath asked the Tribunal to deal with the matter leniently given the reputational damage to the Respondent caused by his appearance before the Tribunal.

DECISION

The Tribunal has made it clear on numerous occasions that failure to respond to the Law Society hampers the Law Society in the performance of their statutory duty and brings the profession into disrepute. In this case the Respondent failed to respond in connection with a number of matters and over a prolonged period. The Tribunal however took into account the fact that the Respondent had sorted out all the substantive matters and fully co-operated with the Law Society since the service of the Complaint and had entered into a Joint Minute. The Tribunal also took into account the psychiatrist's report on the Respondent and the references provided. In connection with the breach of Rule 6 of the Solicitors (Scotland) Accounts Rules 1997 by intromission with funds and taking of fees from an executry before an executor had been appointed, the Tribunal made an in cumulo finding as the Tribunal would not necessarily find that this breach of Rule 6 on its own would amount to professional misconduct.

The Tribunal considered that a Censure together with a fine of one thousand pounds would be an appropriate penalty in this case. The Tribunal made the usual order with regard to expenses.

The Tribunal ordered publicity of the decision but such publicity will not include the name of the Respondent's clients due to any embarrassment that this may cause them.

Chairman