

**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

**DONALD STEWART DUNCAN,
Sit-ma-lain, Bowriefield, By Forfar**

1. A Complaint dated 14th July 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Donald Stewart Duncan, Sit-ma-lain, Bowriefield, By Forfar (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 under Section 53 and Part II of Schedule IV of the Solicitors (Scotland) Act 1980 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 by the Respondent.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 30 September 2004 and notice thereof was duly served on the Respondent.
4. The hearing took place on 30 September 2004. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was not present and not represented. After hearing evidence from the Clerk with regard to service of the Complaint and the Notice of Hearing the Tribunal resolved to proceed in the Respondent's absence.
5. The Tribunal found the following facts admitted or proved
 1. The Respondent was born on 1st November 1950. On 17th March 2004 the Respondent was found guilty by the Scottish Solicitors' Discipline Tribunal of professional misconduct in respect of his overcharging of fees in the winding up of the estate of the late Mrs. A, his failure to render a fee note to his client, Mr B the executor-nominate in terms of Mrs. A's Will and his failure to obtain written authority from Mr B to debit the ledger account of the executry estate contrary to Rule 6(1)(d) of the Solicitors (Scotland) Accounts Rules 1997. The Respondent's name was then ordered to be struck off the Roll of Solicitors in Scotland.
 2. **Mrs. A's Executry**

On 4th September 2003 the Complainers made a determination under Section 42(A)(1) of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent who

practised from 24th April 1987 until 31st January 1999 as the sole principal of the firm of D.S. Duncan at 35 West High Street, Forfar to Mr. B as executor foresaid. The Complainers then further determined in terms of Section 42(A)(3) of the said Act that the Respondent be directed to refund to Mr. B as executor foresaid (a) the sum of £6,540.76 in respect of fees overcharged in the aforementioned executry, (b) the sum of £277.28 in respect of fees wrongly debited to the executry and (c) the sum of £100.00 in reimbursement of the expenses of a Certificate of Assessment of Fee provided by the Auditor of Dundee Sheriff Court and they then also further determined and directed the Respondent in terms of Section 42(A)(2)(d) of the said Act to pay to Mr. B as executor foresaid the sum of £1,000.00 by way of compensation.

3. By letter dated 17th September 2003 the Complainers wrote to the Respondent requesting him to provide them with a written explanation of the steps which he had taken to comply with the aforementioned directions within a period of 21 days from that date. The Respondent did not in the event provide the Complainers with this written explanation. By letter dated 17th October, 2003 the Complainers again wrote to the applicant requesting him to provide them with information within seven days from that date on the steps which he was taking to implement the aforementioned directions. In the event the Respondent again did not provide the Complainers with this information. By letter dated 1st March 2004 the Complainers again wrote to the Respondent giving him notice in terms of Section 42(B) of the said Act. The Complainers therein called upon the Respondent to

provide confirmation to the Complainers' Director of Client Relations, Mr. Philip J. Yelland, of the steps which he had taken to implement the aforementioned determinations and directions within a period of 21 days from the date of this letter. By letter dated 5th April, 2004 the Respondent wrote to the Complainers professing not to have received certain correspondence from them which had been sent to him by way of recorded delivery letter. In this letter the Respondent confirms having received the aforementioned letter from the Complainers to him dated 1st March 2004. The Respondent neither appealed the aforementioned determinations nor implemented same.

6. Having considered the foregoing circumstances, the Tribunal find that the Respondent has failed to comply with the Determination and Directions given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified, namely within 21 days of 1 March 2004; and the Tribunal resolved to make an Order in terms of Section 53C (2) of The Solicitors (Scotland) Act 1980 and issued an Interlocutor in the following terms:-

Edinburgh 30 September 2004. The Tribunal having considered the Complaint dated 14 July 2004 at the instance of the Council of the Law Society of Scotland against Donald Stewart Duncan, Sit-ma-lain, Bowriefauld, by Forfar; Find that the Respondent failed to comply with the Determination and Directions given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified, Direct that an Order be issued under Section 53C (2) of the said Act and 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 will include the name of the Respondent.

(signed)

Alistair M Cockburn

Vice Chairman

7. 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

Vice Chairman

NOTE

On 4th September 2003 the Law Society made a Determination under Section 42A (1) of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent. The Law Society further Determined that the Respondent be Directed to refund various fees, the sum of £100.00 in respect of reimbursement of expenses and that the Respondent pay £1,000.00 by way of compensation.

The Tribunal heard evidence from the Clerk that the Complaint was sent to the Respondent at the address in the Complaint on 3 August 2004 by Recorded Delivery which was not returned. The Clerk also confirmed that the Notice of Hearing was sent to the Respondent at the address in the Complaint on the 26 August 2004 by Recorded Delivery service and was not returned. No answers had been lodged by the Respondent.

The Tribunal heard evidence from Philip Yelland, Director of Client Relations with the Law Society to the effect that the Law Society had made a Determination on 4 September 2003 that the Respondent had provided inadequate professional service and Determined that the Respondent be Directed to refund various fees, the sum of £100.00 and pay £1,000.00 by way of compensation. Mr Yelland confirmed that the Respondent was written to on 17 September 2003 requesting that he provide them with a written explanation of the steps he had taken to comply with the Determination and Directions. The Respondent did not provide the Law Society with a written explanation. Mr Yelland confirmed that the Law Society wrote again on 17 October 2003 and that by letter dated 1 March 2004 the Complainers again wrote to the Respondent giving him Notice in terms of Section 42B of the Solicitors (Scotland) Act 1980. Mr Yelland stated that a letter was received from the Respondent on 5 April 2004 which showed that he had received the Law Society's letter of 1 March. Mr Yelland confirmed that the Respondent had not appealed the Determinations nor implemented the same.

SUBMISSIONS FOR THE COMPLAINERS

Mr Muir sought an Order from the Tribunal in terms of Section 53C (2) of the Solicitors (Scotland) Act 1980. Mr Muir also moved for the expenses of the Complainers.

DECISION

The Tribunal found Mr Yelland to be a credible and reliable witness and accepted his account of events. It was clear that the Respondent had failed to comply with the Determination and Directions given by the Law Society within the period specified. Having regard to the circumstances and the precise terms of Section 53C (2) the Tribunal is of the opinion that an Order should be made. Further the Tribunal find that the Respondent has had ample time to comply with the Determination and Directions and it is therefore appropriate for the Respondent to bear the whole of the expenses of these proceedings. As the disposal of this Complaint constitutes a Decision for the purposes of the Fourth Schedule to the Solicitors (Scotland) Act 1980 the Tribunal is required in terms of paragraph 14 of the schedule to give publicity to this decision.

Vice Chairman