

**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

**ALAN ALEXANDER CRAIG,
Solicitor, 15 McCallum Drive,
Cambuslang, Glasgow**

1. A Complaint dated 2 September 2004 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alan Alexander Craig, 194 Glen More, St Leonards, East Kilbride (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 23 November 2004 and notice thereof was duly sent to the Respondent at the address in the Complaint.

4. The hearing took place on 23 November 2004. The Complainers were represented by their Fiscal, Valerie Johnston, Solicitor, 19-23 High Street, Dunfermline. The Respondent was not present but was represented by Mr J E Edment, Solicitor, Glasgow, who gave the Respondents current address as 15 McCallum Drive, Cambuslang, Glasgow.

5. A Joint Minute was lodged in which the facts, averments of duty and averments of professional misconduct in the Complaint as amended were admitted. No evidence was led.

6. The Tribunal found the following facts established
 - 6.1 The Respondent is a Solicitor enrolled in the Register of Solicitors for Scotland. He was born on 17th June 1958. He was admitted on 14th May and enrolled on the Register of Solicitors in Scotland on 4th June, both days in the year 1982.

He formerly practised on his own account under the name of Alan A Craig & Company at premises at Room H, Townhall Business Centre, High Road, Motherwell. He became a Partner in that business on 1st January 1989 and ceased to be a Partner on 30th September 2001. He ceased practising on his own account thereafter. He was sequestrated on 5th December 2001.

 - 6.2 The Mr B and Mrs C's Executries

On 10th July 2001, Mr A, Property 1, sought the aid of the Complainers in connection with the conduct of the Respondent in failing to progress the Executry of his father, Mr B, who died

9th December 2000 and his mother, Mrs C, who died on 24th March 2001. The Respondent was instructed in the former Executry on 11th December 2000 and provided with all financial paperwork to enable the Estate to be wound up in terms of the deceased's Will. He advised Executors and beneficiaries on a regular basis that he was progressing the winding up the Estate and that the matter was almost completed. After the death of Mrs C, a meeting took place on 27th March 2001 in relation to that Estate. At that meeting, it was disclosed that the Respondent had not completed or even started to carry out the work necessary to settle Mr B's Executry.

- 6.3 The Respondent assured the beneficiaries that he would be able to settle all matters relating to Mr B's Executry within two weeks and that would allow him to concentrate on Mrs C's Estate. He was allowed to continue and provided with all paperwork relating to Mrs C including a copy of her Will. On 17th April 2001 after consultation with the Respondent, the Executors instructed marketing of the home of their deceased parents. A contract was entered into for the sale with an entry date of 25th May 2001. A meeting with the Respondent took place on 12th June 2001, at which time he advised that the sale of the house had gone smoothly and the monies had been lodged into the clients' account. He confirmed that the completion of both Executries would occur within the following two weeks. A final meeting was arranged for 27th June 2001 but cancelled by the Respondent at the last minute. After numerous calls and a fax, arrangements were made for a meeting on 2nd August 2001.
- 6.4 On 27th July 2001, Mr A discovered that the sale of his late parents' house had not been concluded and that the Respondent had repeatedly failed to correspond with the buyer's solicitor. Mr A intimated by fax that he was withdrawing instruction and

attended at the Respondent's office the following day to collect all papers relating to both Executries. The Respondent was not available to speak to him. He ascertained from perusing the paperwork that no active steps had been carried out to deal with the Estate of the late Mr B. Similarly, there had been little action taken to progress the Executry of Mrs C.

6.5 The Complainers, on receipt of the Help Form on 10th July 2001, clarified the details of the complaint and intimated it to the Respondent on 28th August 2001 requiring his written response within 14 days. A follow up letter was sent on 27th September 2001 and another by Recorded Delivery on 10th October 2001. On 30th November 2001, a Formal Notice under Section 15(2)(i)(i) of the 1980 Act was sent to the Respondent but returned marked "not called for". Thereafter, correspondence with him was dealt with through his Solicitor, J E Edment of West Anderson & Company, Solicitors in Glasgow. They acknowledged all correspondence and advised the Complainers that they were forwarding this to the Respondent but not receiving a reply from him. Letters for a response were issued to him via his Solicitors on 10th January 2002, 20th February 2002 and 12th March 2002. No response or comment was received from the Respondent in relation to the complaint.

6.6 Mr D

On 31st May 2002, Mr D, Property 2, invoked the aid of the Complainers in relation to the conduct of the Respondent in relation to an allegation about the loss or destruction of a file containing a Joint Minute in a divorce action which covered transfer of property. Correspondence was entered into over the next 5 months in an effort to trace said file. Mr D confirmed on 8th October that he wished to progress a formal complaint.

6.7 The Complainers wrote to the Respondent on 7th November 2002 requiring his written response within 14 days. Said letter was issued to his Solicitor, Mr Edment, who acknowledged that he had received it and copied it to the Respondent on 11th November. Follow up letters were sent on 9th December 2002 and 8th January 2003. On 10th January 2003, the Complainers were advised by Mr Edment that he had had no reply from the Respondent. The Respondent did not reply to the Complainers in relation to this matter.

6.8 Mr E

By letter dated 29th November 2001, Messrs Jack Grant & Company, Solicitors, Motherwell invoked the aid of the Complainers on behalf of their client, Mr E in relation to concerns about the conduct of the Respondent. The Respondent had been instructed by Mr E on or about 14th July 2001 in relation to a divorce action. He had requested and received £250 to account of fees and outlays. He had failed to progress the divorce, failed to advise Mr E that he was shortly to cease practice and failed to return the money to him in spite of no action being taken in relation to the divorce. The Complainers were, at that time, making enquiries into the cessation of the former firm of Alan Craig & Company, Motherwell. Subsequently, in August 2003, Mr E advised that he wished to progress this matter as a formal complaint.

6.9 A formal letter with the Head of Complaint identified was submitted to the Respondent through his Solicitors on 12th August 2003 requiring his written response within 14 days. A follow up letter was sent on 29th August 2003 and Formal Notices under Section 15(2)(i)(i) and 42C of the 1980 Act issued by Recorded Delivery on 18th September 2003. The second part of the Section 15(2)(i)(i) Notice was served by Recorded Delivery on 31st October 2003. The Respondent has

failed to reply to the Complainers in connection with this complaint.

6.10 Ms F

Ms F, Property 3, invoked the aid of the Complainers on 5th December 2000 in relation to the conduct of the Respondent in handling a conveyancing transaction on her behalf. Ms F marketed her property for sale through Messrs Slater, Hogg & Howieson and they faxed an offer to the Respondent on 20th June 2000. He failed to issue a Qualified Acceptance until 13th November 2000, 3 days prior to the original date of entry. The prospective purchasers could no longer be contacted and the sale was lost. In spite of that, the Respondent obtained £52,500 from the Halifax plc, being the mortgage advance for the purchase of Ms F's new property. The funds were received direct by bank transfer into his client account on 15th November 2000. The Respondent retained the funds and failed to advise the Halifax of the position. He obtained bridging finance for the purchase of her new home on 17th November 2000 and used that to settle the transaction that day. He did not tell the Halifax about the Bridging Loan nor did he return the loan funds to them.

6.11 On 21st December 2000, the Halifax sent a fax to the Respondent demanding return of the mortgage funds, the mortgage not having been concluded. A second fax was sent to him on 22nd December and it was pointed out that the funds should have been returned if settlement was not effected within 7 days of the due date. The Respondent returned the funds by cheque dated 27th December 2000 referring in his letter to a telephone discussion with a representative of the Society. On 12th January 2001, the Halifax wrote again seeking payment of £401.82 for accrued interest. They issued reminders on 12th February 2001, 3rd April 2001, 22nd June 2001 and 22nd October 2001. On 31st October 2001, they advised that his

panel appointment had been suspended and referred the matter to the Complainers.

- 6.12 Messrs Pomphreys Solicitors Wishaw submitted an offer to purchase Ms F's original home on behalf of clients by letter dated 20th November 2000. The transaction proceeded to settlement on 26th January 2001. They wrote to the Respondent for paperwork required including the Discharge of Ms F's previous mortgage on 5th April, 27th April, 18th May and 13th June 2001. The Respondent did not reply. He submitted the Discharge to the Halifax for execution on 14th June 2001.
- 6.13 The Complainers wrote to the Respondent on 16th March 2001 with details of the Heads of Complaint and requiring him to provide a written response within 14 days. He failed to reply. Follow up letters were sent on 6th April 2001 and by Recorded Delivery on 27th April 2001. By letter dated 9th May, he advised that he would draft a reply in the next few days. He did not. On 1st June 2001, he was issued with formal Recorded Delivery Notices under Sections 15(2)(i)(i) and 42C of the 1980 Act.
- 6.14 On 15th June 2001, a reply was received from him. The Respondent stated in the letter that he had subsequently returned the loan funds from the Halifax plc and all costs incurred were being met by his firm. The charges had not, in fact, been paid and still remained outstanding in October 2001 when he closed his business.
- 6.15 Ms F advised that irrespective of his response, she wished to proceed with her complaint. The Respondent was advised of this by the Complainers by letter dated 25th July 2001. A follow up letter was sent on 13th August and Formal Notices served on him by Recorded Delivery on 29th August 2001. A further follow up letter was sent on 2nd October and 23rd

October 2001. Thereafter, additional information was provided by Ms F and the Complainers investigated same. By letter dated 2nd April 2002 submitted to the Respondent via his Solicitor, he was formally advised of extended Heads of Complaint and required to give his written response within 14 days. The Complainers sought to obtain the files relating to this transaction from Ms F's new Solicitors and encountered problems in doing so. This was resolved on 27th November 2002 and the Respondent advised through his Solicitor that the file was available if he wished to make any response and see it. No reply was received. At all times, the Solicitor advised that copies of the Complainers' correspondence had been submitted to the Respondent.

7. Having heard submissions the Tribunal found the Respondent guilty of Professional Misconduct in respect that:

- 7.1 He delayed unconscionably and ultimately failed altogether in the administration of the straightforward Executry of Mr B in particular in obtaining confirmation and in settling with the relatives and beneficiaries.
- 7.2 He delayed unconscionably and ultimately failed altogether in the administration of the straightforward Executry of Mrs C in particular in obtaining confirmation and in settling with the relatives and beneficiaries.
- 7.3 He misled the Executors and beneficiaries in the Estates of Mr B and Mrs C regarding the progress made and the sale of the property belonging to the deceased parties.
- 7.4 He repeatedly failed to reply to the Complainers reasonable enquiries regarding the complaint of Mr A and to comply with Notices served upon him.

- 7.5 He repeatedly failed to reply to the reasonable enquiries of the Complainers about the complaint of Mr D.
- 7.6 He repeatedly failed to reply to the Complainers reasonable enquiries regarding the complaint of Mr E and to comply with Notices served upon him.
- 7.7 Having obtained loan funds from the Halifax plc in a transaction where he was unable to settle and obtain a valid security on behalf of the lender, he thereafter failed to advise them of this, retained those funds on his client account for a period of 6 weeks and repeatedly failed to comply with requests by the Halifax plc for interest due until some time after October 2001.
- 7.8 He repeatedly failed to reply to the reasonable enquiries of the Complainers about the complaint of Ms F and to comply with notices served upon him.
8. The Tribunal noted two previous Findings of Professional Misconduct against the Respondent in respect of analogous matters. Having heard the Solicitor for the Respondent in mitigation the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 23 November 2004. The Tribunal having considered the Complaint dated 2 September 2004 at the instance of the Council of the Law Society of Scotland against Alan Alexander Craig, sometime of 194 Glen More, St Leonards, East Kilbride, now of 15 McCallum Drive, Cambuslang, Glasgow; Find the Respondent guilty of Professional Misconduct in respect of his delay and failure in the administration of two executries, his misleading executors and beneficiaries in respect of the progress with an executry estate, his failure to reply to the reasonable requests of the Law Society for information, his obtaining loan funds in a transaction where he was unable to settle and obtain a valid security on behalf of the lender, his retaining those funds for 6 weeks and his failure to comply with

requests by the lender for interest due; Censure the Respondent and Direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that for a period of five years with effect from the expiry of the suspension imposed by the Tribunal at its meeting on 25 March 2003 any Practising Certificate held or issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer as might be approved by the Council or the Practising Certificate Committee of the Council of the Law Society of Scotland; Find the Respondent liable in respect of one half of the expenses of the Complainers and 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.

(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

The Respondent, through his Agent, admitted all the facts, averments of duty and averments of professional misconduct in the Complaint as amended and acknowledged the two previous findings of professional misconduct made by the Tribunal on 12 December 2001 and 25 March 2003. The Complaint and the Notice of Hearing had been served on the Respondent at the address in the Complaint, these had both been returned within the previous few days by the Post Office. Mr Edment however confirmed the current address of the Respondent and that the Respondent was happy to have matters dealt with on this date.

SUBMISSIONS FOR THE COMPLAINERS

The Fiscal produced copies of the two previous Findings against the Respondent. Mr Edment confirmed that these were accepted by the Respondent. Miss Johnston explained that matters had been included in this later Complaint as the complaints from the particular complainers concerned had not been determined until after the 31 January 2003 when the last Complaint had been lodged with the Tribunal. It was however accepted that the actings of the Respondent go back to 2001. Miss Johnston stated that Mr A was still extremely angry with regard to the Respondent's conduct and that his whole family had been very upset by the delays. In connection with Mr D, Miss Johnston stated that there had been a Finding of inadequate professional service made which had been met by the insurers. In connection with Mr E matters were canvassed over a period of time but it was not until August 2003 that Mr E said he wished to pursue a Complaint. A Finding of inadequate professional service had been made in June 2004 and had been settled by the insurers. In connection with Ms F the client felt particularly upset and felt very let down by the Respondent. Miss Johnston referred the Tribunal to the help forms completed by Ms F and also Mr A. Miss Johnston stated that these matters had not been available to the Fiscal Mr Muir at the previous hearing and so although the matters came within the same period of time as was covered in the previous Findings they could not have been included in the previous Complaints.

SUBMISSIONS FOR THE RESPONDENT

Mr Edment emphasised that these matters arose during the same time period as the matters concerned in both the two previous Findings against the Respondent. The Respondent had entered into a Joint Minute in respect of all three cases and fully cooperated with the Law Society. In connection with Mr A the Respondent had little experience of doing executries and matters became more complicated than he had anticipated. In connection with Mr D it was accepted that the Respondent did not reply but he had no recollection with regard to the matter and did not have access to files. In connection with Mr E it was accepted that the Respondent did not handle the fee properly. In connection with Ms F the funds were requested from the lenders before the Respondent realised that there was a problem. The reminder with regard to the funds had come in when he was on holiday and he had not realised this until he came back on the 27 December and he returned the money at this point. Mr Edment stated that the Respondent was a highly respected and acknowledged solicitor amongst his peers and was a gifted court practitioner. His difficulties had started at the end of the 1990's when there was a downturn in business and he had financial pressures. He also had an unsettled personal life and health problems. He was performing under par. He tried to evade his problems and covered up matters which led to misleading clients and he tried to deflect unwanted pressures and attention. He realised he was not coping and he called in the Law Society to allow them to take over the business and he assisted them. Mr Edment stated that the Respondent's health problems were now resolved, he had been sequestrated and his debt problems had been relieved and he was now working, selling and designing kitchens, and was much happier. The Respondent was re-married and had sorted himself out. Mr Edment emphasised that all the matters in the two previous sets of Findings and the matters before the Tribunal today emanated from the same period. The Respondent had no immediate plans to return to the law, but Mr Edment emphasised that he was a gifted solicitor and would be a valuable asset if working for example in industry, local authority or the Fiscal's office. Mr Edment also asked that the Tribunal consider the matter of expenses as the Respondent had already had to pay two lots of expenses and now may be liable for a third set of expenses arising from matters in the same time period. Miss Johnston confirmed that there would require to be some reduction in expenses, if they were awarded, given that the preparation of the affidavits and productions had been done prior to the Complaint being properly served. The

Complaint contained the wrong address despite the Respondent's correct address being known to one department of the Law Society. Mr Edment confirmed that the Respondent's current address was 15 McCallum Drive, Cambuslang, Glasgow.

DECISION

The Tribunal took account of the submissions and also read the help forms lodged. Solicitors have a duty to progress business entrusted to them with reasonable expedition and to reply to the Law Society's enquiries. Failure to do so is prejudicial to the reputation of the profession. The Tribunal took particular account of the fact that these matters emanated from the same period and were analogous to matters contained in the two previous sets of Findings which had resulted in the Respondent being suspended. The Tribunal's main concern was with regard to the Respondent returning to practice as a sole practitioner. The Tribunal felt that the public would be protected if a restriction was imposed on the Respondent's Practising Certificate so that when he returned to practice he would require to work under supervision and would not be able to operate as a sole practitioner. With regard to the question of expenses the Tribunal had sympathy for the Law Society's position that they could not necessarily wait until they had all matters concluded before they took the Complaint to the Tribunal. However the Tribunal also had sympathy for the Respondent's position as he had had to deal with three Complaints and three Tribunal Hearings all emanating from matters occurring within the same time period. The Tribunal also noted that due to difficulties with the Respondent's address the Complaint contained the wrong address despite the fact that the Law Society was in possession of the current address and accordingly it was felt that it was inappropriate that the Respondent should have to pay the expenses of the preparation of the affidavits and the Law Society's productions. Prompt action had been taken by the Respondent and his agent prior to the hearing, which had been helpful in bringing an early conclusion to the proceedings. In the circumstances the Tribunal considered that the Respondent should only pay half the expenses of the Tribunal and the Complainers. The Tribunal made the usual order with regard to publicity.

Chairman