

**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
26 Drumsheugh Gardens, Edinburgh**

against

**FRANCIS COLLINS, Solicitor, 79
Strathaven Road, Kirkmuirhill,
South Lanarkshire**

1. A Complaint dated 20th July 2005 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Francis Collins, Solicitor, 79 Strathaven Road, Kirkmuirhill, South Lanarkshire (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. In response to the Complaint the Respondent sent a letter to the Tribunal dated 4th August 2005 stating that he did not see any point in lodging answers to the Complaint as he could not dispute

the facts contained in it. No formal answers were lodged by the Respondent.

3. In terms of its Rules the Tribunal appointed the Complaint to be heard on 20th September 2005 and notice thereof was duly served on the Respondent.

4. At the hearing on 20th September 2005 the Complainers were represented by their Fiscal, Sean Lynch, Solicitor, Kilmarnock. The Respondent was not present and not represented. No evidence was led.

5. The Tribunal found the following facts admitted or proved

5.1 The Respondent is Francis Collins. He is a Solicitor enrolled in Scotland. He was born on 12th February 1960. He was admitted as a Solicitor on 19th July and enrolled on 9th August both months of 1983. He formerly carried on practice at 31 Wellmeadow Street, Paisley. He is not currently employed by any legal firm. He formerly resided at 1 Lyttleton West Wood, East Kilbride. He presently resides at 79 Strathaven Road, Kirkmuirhill, South Lanarkshire.

5.2 Mr A

On 13th January 2005 the Complainers made a determination under Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client Mr A. The Complainers further determined in terms of Section 42A(2)(d) of the said act that the

Respondent was to pay compensation to Mr A in the sum of £250.00

5.3 The Complainers wrote to the Respondent on 31st January 2005 intimating the determination to him and requiring him to provide a written explanation of the steps which he had taken to comply with the direction within 21 days in terms of Section 42B(1)(a) of the Act. The days of appeal passed without the Respondent making any appeal against the determination.

5.4 On 25th February 2005 the Complainers wrote to the Respondent and served upon him a notice in terms of Section 42B of the Solicitors (Scotland) Act 1980 requiring the Respondent to provide confirmation to the Complainers of the steps which he had taken to implement the council's determination. The Respondent did not reply. The Respondent has failed to implement the said Determination and Direction.

5.5 Ms B

On 3rd March 2005 the Complainers made a determination under Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client Ms B. The Complainers further determined in terms of Section 42A (2)(d) of the said Act that the Respondent was to pay compensation to Ms B in the sum of £200.00.

5.6 The Complainers wrote to the Respondent on 18th March 2005 intimating the determination to him and requiring him to provide a written explanation of the steps which he had taken to comply with the direction within 21 days in terms of Section 42B(1)(a) of the Act. The days of appeal passed without the

Respondent making any appeal against the determination.

5.7 The Respondent did not communicate with the Complainers. On 21st April 2005 the Complainers wrote to the Respondent and served upon him a notice in terms of Section 42B of the Solicitors (Scotland) Act 1980 requiring the Respondent to provide confirmation to the Complainers of the steps which he had taken to implement the council's determination. The Respondent did not reply. The Respondent has failed to implement the said Determination and Direction.

5.8 Mr C
On 7th April 2005 the Complainers made a determination under Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service was provided by the Respondent to his client Mr C. The Complainers further determined in terms of Section 42A(2)(a)(i) and (3) of the Act that the fees to which the Respondent was entitled from Mr C were nil, and that he was to refund or waive these fees; the fees paid by Mr C amounted to £125.00. The Complainers further determined in terms of Section 42A(2)(d) of the said Act that the Respondent was to pay compensation to Mr C in the sum of £400.00.

5.9 The Complainers wrote to the Respondent on 20th April 2005 intimating the determination to him and requiring him to provide a written explanation of the steps which he had taken to comply with the direction within 21 days in terms of Section 42B(1)(a) of the Act. The days of appeal passed without the Respondent making any appeal against the determination.

- 5.10 On 18th May 2005 the Complainers wrote to the Respondent and served upon him a notice in terms of Section 42B of the Solicitors of (Scotland) Act 1980 requiring the Respondent to provide confirmation to the Complainers of the steps which he had taken to implement the council's determination. The Respondent did not reply. The Respondent has failed to implement the said Determination and Direction.
- 5.11 Mr D
On 7th April 2005 the Complainers made a determination under Section 42A of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided by the Respondent to his client Mr D. The Complainers further determined that in terms of Section 42A(2)(d) of the Act, the Respondent was to pay compensation to Mr D in the sum of £100.00.
- 5.12 The Complainers wrote to the Respondent on 21st April 2005 intimating the determination to him and requiring him to provide a written explanation of the steps which he had taken to comply with the direction within 21 days in terms of Section 42B(1)(a) of the Act. The days of appeal passed without the Respondent making any appeal against the determination.
- 5.13 On 18th May 2005 the Complainers wrote to the Respondent and served upon him a notice in terms of Section 42B of the Solicitors (Scotland) Act 1990 requiring the Respondent to provide confirmation to the Complainers of the steps which he had taken to implement the council's determination. The Respondent did not reply. The Respondent has failed to implement the said Determination and Direction.

6. Having considered the foregoing circumstances the Tribunal 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 42A of the Solicitors (Scotland) Act 1980 in respect of Mr A, Ms B, Mr C and Mr D within the respective periods specified: the Tribunal resolved to make Orders in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980 and issued an Interlocutor in the following terms:

Edinburgh 20th September 2005. The Tribunal having considered the Complaint dated 20th July 2005 at the instance of the Council of the Law Society of Scotland against Francis Collins, Solicitor, 79 Strathaven Road, Kirkmuirhill, South Lanarkshire; Find that the Respondent failed to comply with the Determinations and Directions given by the Council of the Law Society of Scotland under Section 42A 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 a agent and client indemnity basis in terms of Chapter Three of the last published Law Society's Table of Fees for general business with a unit rate of £11.85; and Direct that publicity will be given to this decision and that this publicity should include the name of the Respondent.

(signed)

Kenneth R Robb
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

The Council of the Law Society of Scotland had made four separate Determinations under Section 42A of the Solicitors (Scotland) Act 1980 which were not appealed by the Respondent. A Complaint was then made under the provisions of Section 53C of the said Act which states that

- (1) Where a solicitor fails to comply with a direction given by the Council under Section 42A (including, as the case may be, such a direction as confirmed or varied on appeal by the Tribunal or the Court) within the period specified in the notice relating to that direction given to the solicitor under Section 42B(1) or such longer period as the Council may allow, the Council shall make a Complaint to the Tribunal and may appoint a solicitor to represent them in connection with the complaint.
- (2) If after inquiry into a complaint made under subsection (1) the Tribunal is satisfied that the solicitor has failed to comply with the direction the Tribunal may order that the direction, or such part of it as the Tribunal thinks fit, shall be enforceable in like manner as an extract registered decree arbitral in favour of the Council bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

Mr Lynch submitted that the Tribunal could accept the letter dated 4th August 2005 from the Respondent as an admission that the terms of the Complaint were admitted. The Tribunal were satisfied that the notice of hearing had been served on the Respondent having been sent Recorded Delivery post on 15th August 2005 and not having been subsequently returned by the Post Office as undelivered.

In the circumstances the Tribunal were prepared to accept that the Complaint had been admitted by the Respondent and to proceed in his absence. The Tribunal found that the Respondent had accepted that he had not complied with the Determinations and Directions of the Law Society as specified in the Complaint. Having regard to the circumstances and to the terms of Section 53(2) the Tribunal is of the opinion that Orders should be made. The Tribunal find the Respondent liable for 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