

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

**D E C I S I O N**

**in Appeal under Section 42A(7) of  
the Solicitors (Scotland) Act 1980**

**by**

**MICHAEL ALAN GRANT  
MCNIVEN, The Granary, Skirling  
Mill, By Biggar**

**Appellant**

**against**

**THE COUNCIL OF THE LAW  
SOCIETY of SCOTLAND  
26 Drumsheugh Gardens, Edinburgh**

**First Respondents**

**and**

**MR & MRS A , Property 1**

**Second Respondents**

1. An Appeal was lodged with the Scottish Solicitors' Discipline Tribunal under the provisions of Section 42A(7) of the Solicitors (Scotland) Act 1980 by Michael Alan Grant McNiven, The Granary, Skirling Mill, By Biggar ("the Appellant") against a finding of the Council of the Law Society of Scotland ("the Law Society") dated 28<sup>th</sup> February 2006 that the Appellant had provided an Inadequate Professional Service in relation to his clients Mr & Mrs A, Property 1 ("the Lay Complainer") and a Direction that the Appellant should limit his fees/outlays to work done up to and including 31<sup>st</sup> October 2000, that he refund or waive any

fees and outlays rendered in connection with work done after this date and that he pay five hundred pounds by way of compensation to the Lay Complainer.

2. In accordance with the Rules of the Tribunal, the Appeal was formally intimated to the Law Society and the Lay Complainer and Answers were lodged on behalf of the Law Society and the Lay Complainer.
3. In terms of its Rules the Tribunal appointed the Appeal to be heard on 21<sup>st</sup> June 2006 and notice thereof was duly served on the Appellant and the Law Society and the Lay Complainer. The Law Society indicated that they were not to continue with their opposition to the Appeal and the matter was adjourned until 18<sup>th</sup> July 2006 to allow the Lay Complainer to consider his position.
4. By motion of the Lay Complainer the hearing date on the 18<sup>th</sup> July was postponed to give him further time to consider his position. A fresh hearing date was fixed for 12<sup>th</sup> September 2006 and notice thereof was duly served on the Appellant and the Law Society and the Lay Complainer.
5. The case called on 12<sup>th</sup> September 2006. The Appellant was present and represented himself. The Law Society were represented by their Fiscal, Mr Paul Reid, Solicitor, Glasgow. The Lay Complainer did not appear and was not represented.

6. Having considered the papers lodged and noting that the Law Society was no longer opposing the Appeal and that the Lay Complainer had not attended the Tribunal, the Tribunal pronounced an Interlocutor in the following terms:

Edinburgh 12<sup>th</sup> September 2006. The Tribunal having considered the Appeal by Michael Alan Grant McNiven, The Granary, Skirling Mill, By Biggar (“the Appellant”) against a Finding of Inadequate Professional Service by the Council of the Law Society of Scotland (“the Law Society”) in relation to Mr & Mrs A, Property 1 (“the Lay Complainer”), and the Determination and Direction made by the Law Society dated 28<sup>th</sup> February 2006; Quash the said Determination and Direction; find no expenses due to or by any party and Direct that publicity be given to this decision and that this publicity should include the name of the Appellant.

(signed)

Alistair Cockburn

**Chairman**

7. A copy of the foregoing together with a copy of the Decision certified by the Clerk to the Tribunal as correct were duly sent to the Appellant by recorded delivery service on

IN THE NAME OF THE TRIBUNAL

**Chairman**

**NOTE**

This is an Appeal under the provisions of Section 42A(7) of the Solicitors (Scotland) Act 1980 as amended against a finding of Inadequate Professional Service and Determination and Direction made under Section 42A(1), 42A(2)(a)(ii), 42A(3) and 42A(2)(d) of the Solicitors (Scotland) Act 1980.

**THE APPELLANT'S SUBMISSIONS**

Mr McNiven asked the Tribunal to quash the Determination and Direction of the Law Society and allow his appeal. Mr McNiven also asked that the Tribunal award expenses against the Lay Complainer because the Lay Complainer was vexatious and had complained to the Law Society only after Mr McNiven had served a writ on him in connection with non-payment of fees. Mr McNiven explained that even after the Law Society had indicated that they were not to oppose the appeal the Lay Complainer was granted two further adjournments causing delays. Mr McNiven submitted that the rights of the Lay Complainer carried with them responsibilities and Mr McNiven asked the Tribunal to award the costs of the whole appeal including the cost of obtaining the opinion from Mr D. Reid.

**SUBMISSIONS FOR THE LAW SOCIETY**

Mr Reid indicated that skeletal answers were originally lodged for the Law Society but once the Law Society had had the chance to consider the expert conveyancing opinion from Mr D Reid, the Law Society decided to withdraw opposition to the Appeal. It was agreed between the Appellant and the Law Society that there would be no expenses found due to or by the Law Society or the Appellant. Mr Reid indicated that he wrote to the Lay Complainer on 15<sup>th</sup> June advising him of the position. There had since then been a number of hearings adjourned to allow the Lay Complainer to obtain representation and prepare for the hearing. Mr Reid confirmed that the Lay Complainer had been provided, by the Law Society, with a copy of all the documentation that the Law Society Committee had had before it when considering the matter.

## **SUBMISSIONS FOR THE LAY COMPLAINER**

The Lay Complainer did not appear and was not represented. There was correspondence before the Tribunal from the Lay Complainer stating that he would not be attending the Tribunal and asking that the case be adjourned in order for the Tribunal to have before it all the papers that the Law Society Committee had when considering the matter. The Tribunal also took account of the Lay Complainer's answers and productions which had been lodged.

## **DECISION**

The Tribunal noted that the Lay Complainer was still opposing the appeal but that the Law Society had withdrawn opposition. The Lay Complainer had requested an adjournment to enable the Tribunal to have all the documentation which was before the Law Society Committee. Mr Reid however had advised the Tribunal that the Lay Complainer had copies of everything which had been before the Law Society. The matter had been adjourned on two previous occasions to allow the Lay Complainer to consider his position, to obtain representation and to lodge whatever documentation he wished with the Tribunal. He had not obtained representation or lodged any further documentation. The Lay Complainer had also not attended in person to move for an adjournment or to argue his opposition to the appeal. The Tribunal accordingly refused the motion for adjournment and allowed the appeal.

The Tribunal considered the Appellant's request for expenses. The Tribunal however had some sympathy for the Lay Complainer's position. Up until 15<sup>th</sup> June the Law Society opposed the appeal. The Law Society had imposed the Determination and Direction in the Lay Complainer's favour and the Tribunal considered it quite reasonable that the Lay Complainer be given the first adjournment to allow him to consider his position once the Law Society withdrew opposition. The Lay Complainer was in an unusual position when the Law Society withdrew opposition to the appeal. The Lay Complainer was accordingly allowed a second adjournment to enable him to prepare for the appeal hearing. The Tribunal noted that no substantive hearing had taken place before today's date. In the circumstances the Tribunal did not consider that the Lay Complainer's actions were sufficient to result in a lay member

of the public being penalised by an award of expenses against them. The Tribunal made the usual order with regard to publicity.

**Chairman**