

**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

**MESSRS ROBERTSON & ROSS,
Solicitors, 7 Causeyside Street,
Paisley**

Appellants

against

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

First Respondents

and

MRS A, Property 1

Second Respondent

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 Messrs Robertson & Ross, Solicitors, 7 Causeyside Street, Paisley ("the Appellants") against a Determination and Direction made by the Council of the Law Society of Scotland ("the Law Society") that the Appellants had provided an inadequate professional service to Mrs A, Property 1 ("the Lay Complainer") and a Direction that the Appellants at their own expense, refer their files to law accountants in 21 days in order that the fees for the work carried out prior to Legal Aid

being granted could be calculated at Legal Aid rates, a Determination that the fees to which the Appellants are entitled for pre-Legal Aid work should be at Legal Aid rates and thereafter abated by 25% and the Direction that the Appellants repay to the Lay Complainer the balance of the sum of £31,200, after deduction of the abated fees, within three months of the Committee decision being notified to them.

2. The Appeal was intimated to the Law Society and the Lay Complainer. Answers were lodged on behalf of the Law Society.
3. In terms of its Rules the Tribunal appointed the Appeal to be heard on 6th December 2006 and notice thereof was duly served on the Appellants and the Law Society and the Lay Complainer.
4. When the case called on 6th December 2006 the Appellants were represented by Mr Robertson of Robertson & Ross and Mr Shead, Counsel. The Law Society were represented by their Fiscal, Elaine Motion, Solicitor, Edinburgh. The Lay Complainer was also present.
5. There was a joint motion by the Law Society and the Appellants that the Determination and Direction of the Law Society be varied. The Tribunal agreed to this and issued an Interlocutor in the following terms:

Edinburgh 6th December 2006. The Tribunal having considered the Appeal by Messrs Robertson & Ross, Solicitors, 7 Causeyside Street,

Paisley (“the Appellants”) against a Determination and Direction made by the Council of the Law Society of Scotland (“the Law Society”) that the Appellants had provided an inadequate professional service to Mrs A, Property 1 (“the Lay Complainer”), Vary the Determination and Direction of the Law Society and Direct in terms of Section 42A(2)(c) of the Solicitors (Scotland) Act 1980 that the Appellants, at their own expense, refer their files to law accountants within 21 days of the date of this decision in order that fees for the work carried out prior to Legal Aid being granted can be calculated at Legal Aid rates; Determine in terms of Section 42A(2)(a)(ii) of the said Act that the fees to which the Appellants are entitled for pre-Legal Aid work should be at Legal Aid rates abated by 25%; and further Direct the Appellants in terms of Section 42A(3) of the said Act to repay to the Lay Complainer the sum of £31,200 (comprising £200 received on 27th April 1994 and £31,000 on 14th April 1999) plus interest at 5.34% per annum, applied twice annually on a compound basis, on the said sums from receipt until repayment after deduction of a) £20,000 paid on 3rd June 2003 and b) the abated fee, all within three months of this decision being notified to them; find the Appellants liable in the expenses of the Law Society and the Tribunal as the same may be taxed by the Auditor of the Court of Session on a solicitor 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 be given to this decision and that this publicity should include the name of the Appellants.

(signed)

Alistair Cockburn

Chairman

6. 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 Appellants 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. On the morning of the Tribunal the Appellants and the Law Society made a joint motion to have the Determination and Direction varied. The Lay Complainer had no objection.

SUBMISSIONS FOR THE LAW SOCIETY

Ms Motion, the Fiscal for the Law Society, advised that the Appellants were not to dispute the finding of inadequate professional service and confirmed that the Appellants accepted the Law Society's Determination and Direction with the exception of taking issue with one sentence in the Determination. Ms Motion advised the Tribunal that it had been agreed between the Law Society and the Appellants that the Direction that the Appellants repay the Lay Complainer the balance of the sum of £31,200 after deduction of the abated fee within three months of the Committee Decision being notified to them, should be amended to read that the Appellants should repay to the Lay Complainer the sum of £31,200 (comprising £200 paid on 27th April 1994 and £31,000 paid on 14th April 1999) plus interest at 5.34% per annum, applied twice annually on a compound basis, on the said sums from receipt until repayment after deduction of a) £20,000 paid on 3rd June 2003 and b) the abated fee all within three months of the Tribunal's decision being notified to them. Ms Motion explained that the re-wording of the sentence was to take account of a payment that the Lay Complainer received in 2003. The amendment would avoid a double payment to the Lay Complainer. Ms Motion confirmed that the Lay Complainer was happy with the amendment. Ms Motion further explained that it had become clear on the basis of evidence provided by the Appellants that the Committee did not realise that the Lay Complainer had already received £20,000.

SUBMISSIONS FOR THE APPELLANTS

Mr Shead confirmed that the Appellants were not disputing the inadequate professional service finding and only took issue with one sentence of the

Determination. Mr Shead confirmed that the Appellants and the Law Society had agreed the wording as put forward by Ms Motion.

DECISION

As the Appellants and the Law Society and the Lay Complainer were all agreed that the Determination and Direction of the Law Society should be varied, the Tribunal agreed to the suggested variation.

SUBMISSIONS WITH REGARD TO EXPENSES

Ms Motion asked the Tribunal to award the Law Society expenses on the basis that the appeal as lodged was wide ranging. Ms Motion submitted that the Appellants had now accepted that they provided an inadequate professional service and accepted the Determination and Direction of the Law Society with the exception of one sentence. Ms Motion stated that the information which had led to the agreement was provided late in the day and she had had to go through a lot of paperwork to enable her to respond to the Appellants. Ms Motion stated that there was no reason why this information should not have been before the Law Society Committee at the time. She pointed out that the alteration was only to a very small part of the overall decision.

Mr Shead asked that the Tribunal award expenses to the Appellants on the basis that the Appellants had been successful in having the Determination and Direction of the Law Society amended. Mr Shead stated that the issue which had been resolved was that set out in ground of appeal number two. He explained that the Appeal was lodged in August 2006 and the first ground of appeal was not being insisted upon. He however accepted in response to a question from the Tribunal that the first ground of appeal had not been withdrawn until today. Mr Shead however explained to the Tribunal that the Appellants' correspondence with the fiscal was in relation to ground two. Mr Shead advised that answers were lodged and intimated to the Appellants by the Law Society on 22nd September 2006 and on 13th October the Appellants set out their position with regard to ground two to the fiscal. There was then a meeting on 26th October and on 23rd November the Appellants contacted the fiscal by letter to see if the appeal required to proceed. Mr Shead indicated that if matters had been sorted

out prior to today there would have been no need for the hearing. Mr Shead emphasised that the Law Society Committee made a mistake as to fact and the appeal had been necessary to avoid double counting. Mr Shead's position was that the essence and focus of the preparation for the appeal was in relation to ground two. In response to a question from the Chairman, Mr Shead indicated that a copy of the cheque sent by the Appellants to the Lay Complainer was in the correspondence which was before the Law Society Committee.

Ms Motion stated that she met with Mr Robertson at the end of October and he advised her of his position but she had to go through the documentation and take instructions from the Lay Complainer with regard to this. She confirmed that she was only advised in the last few days that ground one of the appeal would not be going ahead. Mr Shead referred the Tribunal to numbers 98 and 101 of the productions and indicated that the Appellants had raised this issue in the past. Ms Motion asked the Tribunal to consider the case of Baxendale Walker [2006] EWHC643 in connection with awarding expenses. Mr Shead asked the Tribunal to bear in mind that the Appellants' position in connection with the factual misunderstanding had now been accepted.

DECISION ON EXPENSES

The Tribunal had no hesitation in awarding expenses against the Appellants. The Appellants' appeal was based on three grounds of appeal. Ground of appeal one was not withdrawn until the morning of the Tribunal. It was also not at all clear from ground of appeal two and three that the main issue as far as the Appellants were concerned was in connection with the narrow point of the payment of £20,000 to the Lay Complainer. It was not clear to the Tribunal on having read the papers prior to the Tribunal hearing, exactly what the Appellants grounds of appeal were. The Tribunal accordingly considered that it would also not have been clear to the Law Society fiscal. The Tribunal considered that the Appellants failure to seek clarification of the original decision caused them to have to appeal. If the only matter of concern to the Appellants had centred around the payment made to the Lay Complainer there were perhaps other ways that this could have been dealt with rather than necessitating an appeal to the Tribunal. Although the Determination and

Direction of the Law Society has been varied by the Tribunal, the finding of inadequate professional service has been upheld and it is only part of the Determination and Direction of the Law Society that has been amended. It is unfortunate that it was not until the morning of the Tribunal hearing that it became clear that the only issue in dispute was the aspect of a double payment. The Tribunal also took account of the Baxendale case and the fact that the Law Society are acting in the public interest and should not lightly be penalised with an award of expenses. As this is a decision in terms of Schedule 4 to the Solicitors (Scotland) Act 1980 publicity must be given. It was however agreed that the name of the Lay Complainer would not appear in any publicity.

Chairman