

**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 HOWAT ASSOCIATES,
Solicitors, 5 Kilmarnock Road,
Mauchline**

Appellant

against

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

First Respondent

and

**MR A of Property 1,
representative of Mr & Mrs B,
Property 2**

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 Howat Associates, Solicitors, 5 Kilmarnock Road, Mauchline ("the Appellants") against a finding of the Council of the Law Society of Scotland ("the Law Society") dated 13th June 2006 arising from a Complaint by Mr A, Property 1 ("the Complainer") that the Appellants provided an Inadequate Professional Service in relation to their clients Mr & Mrs B of Property 2 and a Direction that the

Appellants should obtain at their own cost a breakdown of the fees charged to Mr & Mrs B and that the Appellants pay to Mr & Mrs B the sum of £500 compensation.

2. In accordance with the Rules of the Tribunal the Appeal was formally intimated to the Law Society and Mr A and Answers were lodged on behalf of the Law Society. A Record was prepared and lodged with the Tribunal.
3. Having considered the Record, the Tribunal resolved to set the Appeal down for hearing and appointed that the Appeal should be heard on 28th September 2006.
4. At the hearing on 28th September 2006 Mr McDonald, Consultant to Mr White and Ms Howat of the Appellants were present and were represented by Mr Jonathan Brown, Advocate. The Law Society were represented by their Fiscal, Mr Paul Reid, Solicitor, Glasgow. Mr A did not appear and was not represented. No evidence was led.
5. Having considered the productions lodged and the submissions made on behalf of the Appellants and the Law Society, the Tribunal pronounced an Interlocutor in the following terms:

Edinburgh 28th September 2006. The Tribunal having considered the Appeal by Messrs Howat Associates, Solicitors, 5 Kilmarnock Road, Mauchline (“the Appellants”) against a Finding of Inadequate

Professional Service by the Council of the Law Society of Scotland (“the Law Society”) in relation to Mr & Mrs B, Property 2, represented by Mr A of Property 1 and the Determination and Direction that the Appellants should obtain at their own cost a breakdown of the fees charged to Mr & Mrs B and that the Appellants should pay to Mr & Mrs B the sum of five hundred pounds by way of compensation; Quash the said Determination and Direction; Refuse the Appellants’ motion for sanction of the cause as suitable for the instruction of Junior Counsel but otherwise Find the First Respondent liable in the expenses of the Appellants 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 last published Law Society 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 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 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 the finding of Inadequate Professional Service and Determination and Direction under Section 42A(1) and 42A(2)(c) and (d) of the said Act.

SUBMISSIONS FOR THE APPELLANT

Mr Brown stated that he hoped that there would be no need for any evidence to be heard in relation to this matter today but that that decision would depend on the success of his initial submission. He advised that if the decision on his initial submission went against him, evidence would require to be led but that such evidence would be limited.

Mr Brown indicated that he wished to raise two preliminary matters. Firstly he lodged a small Supplementary Inventory of Productions for the Appellants. Secondly Mr Brown indicated that an issue of legal controversy might arise in relation to the approach of the Tribunal to this appeal. Mr Brown referred the Tribunal to the decision in the case of MacRoberts and Richard Barrie, a decision of the Tribunal on 19th September 2005. In that Appeal under Section 42A of the 1980 Act the Law Society agreed to the Tribunal considering the matter of new and not exercising a purely appellate jurisdiction. Mr Brown stated that he was aware that the Law Society are reluctant to see this practice adopted generally and that it may be necessary for him to argue the matter before the Tribunal today with legal authorities. However, Mr Brown stated that his principal submission was that the decision appealed against is so flawed that it does not matter what test is applied – it simply cannot stand. Mr Brown submitted that when the Wednesbury test (Associated Provincial Picture Houses-v-Wednesbury Corporation 1948 1 KB 223) is applied to this decision it is so flawed that it cannot stand. Mr Brown stated that he proposed to advance that primary submission solely on the papers and invite the Tribunal to rule on that submission.

SUBMISSIONS FOR THE RESPONDENT

Mr Reid stated that his understanding was that the Tribunal would look at the entire circumstances of the case and form a particular view. He stated that he was not seeking to limit the Tribunal's powers. He stated that if there were an attempt to lead evidence he would want to address the Tribunal further in relation to that. He stated that he was agreeable to Mr Brown making his initial submissions.

SUBMISSIONS ON BEHALF OF THE APPELLANT

Mr Brown outlined the central undisputed facts of the case. He stated that the complainer is Mr A, not the clients, Mr & Mrs B. Mrs B is Mr A's daughter. Mr & Mrs B had been clients of the Appellants for some considerable time. The firm had bought Property 3 for the B's. At the time of the purchase it became apparent there was an issue in relation to the title to the garden ground. The property is terraced and there was an arrangement of shared garden ground with access to a shed. The title offered did not carry with it ownership of the garden ground. At the time of the purchase the property had not changed hands at arms length since the 1960's, the title having been passed between family members of the ultimate sellers and the title problem was never addressed. The B's decided to proceed with the purchase.

In relation to the present dispute the B's had by then become permanently resident in Property 2 and wanted to sell Property 3. They received an offer and in the process of dealing with that offer three problems arose. Firstly the issue of the garden ground. Secondly a significant problem regarding unauthorised alterations and thirdly a minor encroachment in relation to the neighbour's garden shed. There was protracted correspondence in relation to the title issue and the firm tried to get the owners of the ground to grant a conveyance. Ultimately the sale fell through. Thereafter the B's decided to sell the property to Mr A. This sale was done "off market". The Appellants were not involved in the conveyancing for that sale. At the point where a decision was made to abandon the attempt to sell the property on the open market and Mr A agreed to take it off the B's hands, a fee note was made up. This was done by sending the file to the Auditor of the Sheriff Court to assess the fee. The Auditor of

Court's certificate dated 28th October 2003 is item 3 in the Respondent's Inventory of Productions. Items 2 and 4 of that Inventory are the fee note and covering letter respectively in relation to that fee note.

Mr Brown stated that he placed some reliance on the terms of the covering letter. The letter was addressed to the B's at Property 3. It referred to an audited fee. It asks the B's to call the firm as a follow up to that letter. However, Mr Brown stated that the letter prompted no telephone call or any correspondence. The fee was paid by cheque on 28th November 2003. Mr Brown submitted that the fee note was paid within a month and this was relatively quick given that it involved correspondence between Scotland and Spain. Mr Brown stated that the B's did not question the fee note nor ask for any additional information regarding the charging basis, they just paid it. The B's did not give the firm further instructions regarding the conveyancing in relation to the transfer of title of the property to Mr A. Mr Brown stated that all that happened was that the B's sent a written instruction to the Appellants asking for the deeds to be passed to Mr A. Mr Brown stated that in January 2004 the deeds and ancillary documentation usually held with the titles were passed to Mr A in accordance with the instructions in that letter.

Mr Brown stated that there was not a mandate sent for the file at any stage. Mr Brown stated that this is significant, as one of the original heads of complaint was that the Appellants refused to give Mr A the file when he asked for it. Mr Brown stated that that head of complaint was correctly dismissed by the Law Society on the basis that the file belonged to Mr & Mrs B and that there was no mandate in favour of Mr A.

Mr Brown submitted that the complaint which is the subject of this Appeal is in relation to a failure to give information regarding fees. Mr Brown stated that the fees were never queried and no one ever asked for the file.

Mr Brown stated that months then passed and there was no further correspondence with the Appellants. What then happened was that a letter of complaint was lodged with the Law Society. This letter is found at production 1 of the Respondent's Inventory of Productions and is dated 1st May 2004. Mr Brown submitted that what is

significant in relation to the complaint is that it is Mr A who is authorised to make the complaint and deal with it. Mr Brown submitted that he is in a different position from a usual family member making a complaint on behalf of another, as he had a financial interest in the property concerned in the complaint. Mr A was the current owner of the property which has a defective title and he therefore has a financial interest in it.

Mr Brown referred again to the Complainer's letter of complaint. He stated that principally the first complaint is regarding the 1995 conveyancing and the issue of the defective title. Mr Brown stated that that part of the first complaint did not succeed and the ultimate decision of the Law Society was not even to investigate that complaint.

Mr Brown referred to production 1 of the Supplementary Inventory of Productions for the Appellants which is a letter dated 20th July 2004 from the Law Society's Client Relations Office to Mr A regarding Property 3. Mr Brown stated that that letter brought to an end the primary or first complaint. Mr Brown stated that Mr A's response to this was to suggest that the evidence provided by the Appellants was fabricated and that, he submitted, moved it from an unfounded complaint to a false and malicious complaint.

Mr Brown stated that the next issue dealt with in the Law Society's letter of 20th July 2004 was the matter of the fees charged. It is clear from this letter that Mr A had alleged that the B's had been sued instead of merely being asked for payment of the fee. In their letter the Law Society explained how taxation works. The Law Society then referred to the role of the Scottish Legal Services Ombudsman should Mr A remain dissatisfied. Mr Brown then referred the Tribunal to the second letter in the said Inventory; a letter dated 5th August 2004 from the Law Society to Mr A. That letter confirmed that Mr A was still complaining about the service provided when the property was originally purchased.

Mr Brown then referred the Tribunal to the third letter in the said Inventory, a letter also dated 5th August 2004 from the Law Society to the Appellants advising that the Society had refused to investigate the complaint but stating that the matter may still be referred to the Ombudsman.

Mr Brown submitted that it was clear that the Law Society's position in August 2004 was that the complaint was at an end. After extensive discussions with Mr A the Society was effectively saying that there was no case to answer in relation to the letter of complaint dated 1st May 2004.

Mr Brown stated that Mr A did refer the matter to the Ombudsman. Mr Brown referred to item 4 in the said Inventory which is the Ombudsman's report dated 8th September 2004. Mr Brown submitted that this report is of some significance as it details the extent of the communications between Mr A and the Law Society's case manager in relation to the complaint. Mr Brown stated that the Ombudsman goes on to narrate the history of the case once the matter was passed to her office. Mr Brown stated that the Ombudsman did not uphold Mr A's complaint and took no issue with the Law Society's handling of the matter. Mr Brown stated that the matter was therefore at an end in September 2004.

Mr Brown submitted that the present complaint has a 2005 reference and that what happened was that Mr A contacted his MSP Phil Gallie who made representations on his behalf. Mr Gallie's representations led to the Law Society formulating this complaint which was in relation to the failure or delay to provide a breakdown of the fee note. Mr Brown referred the Tribunal to the final letter in the said Inventory, production 5; a letter dated 19th July 2005 from the Law Society to the Appellants. This letter states that these are new complaints which were identified during correspondence with Mr Gallie and not complaints previously considered by the Society. Mr Brown submitted that it is significant how the complaints are dealt with by the Law Society. He referred to item 8 of the Respondent's Inventory which is the Reporter's report dated 30th September 2005 in relation to these complaints. This reports states at paragraph 1 at the bottom of page 8A: -

“The Complaint has arisen from a letter of 1st May 2004 from Mr & Mrs B to the Law Society in which they stated that they purchased the property at Property 3 further to be shown the property and garden area.....”

Mr Brown submitted that this is inaccurate as the Law Society had said previously that this was a new complaint.

Mr Brown stated that further on in the report at page 8H it is significant that it is correctly stated: -

“There is no indication on the file that the solicitors have been asked by the clients to provide the information requested at any time prior to the Law Society becoming involved with their letter of 1st May 2004. As such it cannot be said that there has been a failure or a delay to provide in the period from October 2003 when the fee note was issued to the date of the complaint being lodged with the Law Society.

What can be said is that from that period, it was clear from the complainer’s letter that they were dissatisfied and they felt that the fee note did not adequately explain the work that had been undertaken....”

The report then went on to state: -

“Whilst it is unsatisfactory that the complaint had arisen direct with the Law Society without it, apparently, having been raised with the solicitors in the first instance, the fact is that the solicitors have had since May 2004 in which to provide the information requested to their clients and knock this issue effectively on the head and have chosen not to do so.”

Mr Brown submitted that that is the fundamental error by the Reporter which goes to the root of this case. He submitted that the report looks at the 1st May 2004 complaint in a vacuum and says that there is some issue regarding fees there and it is not dealt with for a year. What the Reporter has misunderstood is that this is not the original complaint it is a new complaint. The original complaint was dealt with by the Law Society. Mr Brown submitted that the Appellants were never asked to give a breakdown, they were told that the matter was at an end as far as the Law Society were concerned.

Mr Reid, in answer to the Tribunal's question, stated that the letter dated 19th November 2004 from Mr Gallie to the Appellants, which is found at page 10 of the Complaint file lodged by the Appellants, raised a question regarding the breakdown of the expenditure incurred by the Appellants.

Mr Brown submitted that there was no request for detailed information in relation to the fees prior to May 2004 when the complaint was under investigation. The Law Society did not ask for a breakdown of the fees at any stage. Then what happened was that Mr Gallie MSP for Mr A, Mrs B's father, asks for a breakdown. He gets a polite reply from the Appellants saying that there was no complaint or request for a breakdown at the time and hence no breakdown is available.

Mr Brown submitted that the letter of 19th November 2004 from Mr Gallie was not a request for a breakdown. He submitted that the B's could have written a very short letter asking for a breakdown but they did not. Mr Brown submitted that the correspondence in November 2004 is not significant and that the fundamental misconception of the Reporter and the Committee is that the matter giving rise to today's appeal arises from the May 2004 letter. Mr Brown stated that the Reporter in a supplementary report goes on to say that the complaint has been re-examined following on from intervention by the Ombudsman. Mr Brown submitted that this is clearly not the case, it is a new complaint.

Mr Brown submitted that there is a fundamental error in treating the matter as an ongoing complaint. Mr Brown stated that it is not clear what view the Committee held regarding the solicitors' obligations beginning with Mr Gallie's letter of 19th November 2004 because they don't address that question. Mr Brown submitted that the context of the correspondence is crucial. Mr Brown submitted that he does not dispute for a moment that where a solicitor tenders a fee and that is queried he has an obligation to expand or provide some detail for the fee note. Mr Brown submitted however that such an obligation cannot subsist indefinitely in relation to a fee that has been paid.

Mr Brown submitted that there was never a request for a breakdown of fees from the B's; there was never a mandate for the file and there was no request for taxation.

There was an investigation by the Law Society in which the complaint by Mr A was not upheld. Then, almost at the first anniversary of the payment of the fees the matter is raised with Mr Gallie by Mr A. Mr Brown submitted that in all these circumstances, the Appellants may have been entitled to take the view that that Mr A, on the basis of a very tenuous mandate, was making trouble by referring the matter to his MSP.

Mr Brown submitted that the only correspondence which is capable of amounting to a request for a breakdown of the fees is Mr Gallie's correspondence commencing 19th November 2004 and that the Appellants were correct in stating that the mandate forwarded was not a competent mandate. Mr Brown submitted that a mandate is by its very nature not delegable. Mr A was the authorised agent of the B's in relation to the conveyancing. It was not possible for Mr A to delegate further to Mr Gallie to request information regarding the breakdown of fees.

Mr Brown submitted that if the complaint was not well founded in May 2004 it could not be well founded at a later stage. Mr Brown submitted that reading between the lines, the Reporter seems to have been influenced by the trenchant tone taken by the solicitors in their response to Mr Gallie. Mr Brown stated that it has been held in English case law that once complaints have been made to the Law Society, solicitors are entitled to take a robust view and not to spare the complainers' feelings.

In conclusion, Mr Brown referred to two errors by the Reporter. Firstly the primary error as to which complaint was being dealt with. It was treated as a continuation of the first complaint, notwithstanding the letter from the Law Society stating that it was not. Secondly the secondary error as to the impact of the Ombudsman. Mr Brown submitted that the Reporter proceeded having had the primary error raised by the solicitors in response to the report. Mr Brown submitted that if one looks at the second supplementary report which is number 10 in the Respondent's Inventory of Productions, at the section on page 10B headed "Summary and recommendation", it states that:

"This part of the Complaint required to be looked at further to the ombudsman opinion being received. As such this fresh list of issues was compiled and the

Complaint was commenced by a complaint from Mr & Mrs B who thereafter authorised Mr A to continue dealing with the Complaint on their behalf.”

Mr Brown submitted that this paragraph is not true as the Ombudsman upheld the Law Society’s decision. Mr Brown submitted that he had some concern that this misunderstanding was contained in the report given the clear terms of the Ombudsman’s report.

Mr Brown submitted that there are two fundamental errors which go to the root of the Committee’s decision. Firstly Mr Brown referred the Tribunal to the Committee’s decision, which is production 13 of the Inventory of Productions for the Respondent. In particular he referred to the third page of that decision detailing the Committee’s deliberations on issue 1. Mr Brown submitted that if the Complaint was not made good originally that it could not be made good during the progress of the complaint.

Secondly Mr Brown submitted that on the grounds of the Wednesbury principles the decision is unreasonable and cannot be allowed to stand. Mr Brown submitted that there was no decision in the report regarding whether the failure to reply to Mr Gallie’s correspondence amounted to an inadequate professional service. Mr Brown stated that his argument was that the decision was so flawed that it could not stand. He submitted that it was open to the Tribunal to consider the issue for itself but he urged the Tribunal not to take that course given the history of the case, the context, the dubious complaint, the suggestion by Mr A of fraudulent behaviour on the part of the Appellants and the dubious mandate.

SUBMISSIONS FOR THE RESPONDENT

Mr Reid stated that he was grateful to Mr Brown for putting forward the undisputed facts. He stated that it was clear from the Ombudsman’s report and the Law Society’s letter of 20th July 2004 that this was a conveyancing complaint. He explained that it was reviewed by the Ombudsman. He stated that the question of the fee note was not dealt with at that time. He stated that this complaint emanated from the letter on 1st May 2004 where the B’s state: -

“We received a bill from Howat Associates for £3,010 plus £526.75 VAT. This bill was not itemised but was stamped Kilmarnock Sheriff Court and stated that we should pay immediately or incur financial penalties. We paid this bill immediately but can’t understand why we were charged all this money but still don’t have title to our garden.”

Mr Reid stated that this was the first notice of the complaint by Mr & Mrs B regarding the issue of the fee note.

In response to a question from the Tribunal regarding whether the Society did not dispose of the complaint contained in the letter dated May 2004, Mr Reid replied that they only disposed of some aspects of the complaint at that stage. Mr Reid submitted that what was decided by the Law Society and reviewed by the Ombudsman was the issue regarding the conveyancing difficulties and not the fee note.

In response to a question from the Tribunal as to whether the Law Society and the Ombudsman did not understand that there was a complaint regarding fees, Mr Reid replied that the Ombudsman made no reference to the issue of the fee note. Mr Reid stated that he could not speculate why the issue of the fee note was not raised with the Ombudsman but stated that it was raised with Mr Gallie shortly thereafter. He submitted that a fair reading of the complaint letter dated 1st May 2004 is that there was a complaint regarding the fee note. Mr Reid submitted that there is support for this proposition in the correspondence which has been lodged. He referred the Tribunal to page 4 of the file lodged by the Appellant’s marked the “complaint file”, a letter from the Appellants to Mr Gallie dated 2nd December 2004. This letter states: -

“Apart from a letter of complaint made to the Law Society of Scotland by Mr & Mrs B on or around May 2004 we have no record of any complaint having been raised about the quantum of charges made by this firm for its professional services.”

Mr Reid submitted that this letter lends weight to the argument that the correct date for the commencement of the complaint is 1st May 2004.

In response to a question from the Tribunal, Mr Reid stated that the next sentence in said letter was factually wrong. That sentence stated: -

“We understand that that complaint was adjudicated upon by the Law Society of Scotland and the Scottish Legal Services Ombudsman, each within the sphere of their respective responsibilities.”

Mr Reid submitted that if the complaint had been adjudicated upon by the Law Society and the Ombudsman, the Law Society would not have made the Determination which was ultimately appealed against. Mr Reid submitted that part of the complaint dealing with the breakdown of fees was not adjudicated upon by the Law Society until 2006.

Mr Reid made reference to Paragraph 1 of Chapter 2 of the Table of Fees for General Business which was lodged as a production. Mr Reid made reference to the said Table of Fees and submitted that when read with the Code of Conduct for Solicitors this makes it clear that solicitors are required keep clients advised of the fees they are charging. Mr Reid submitted that what was provided in the fee note fell short of the provisions of the Code of Conduct as there was no detailed fee note provided.

Mr Reid submitted that the Law Society cannot be criticised for the way that they have dealt with this matter. He submitted that at every point they gave the Appellants an opportunity to respond. He submitted that in these circumstances the decision should not be interfered with.

FURTHER SUBMISSIONS ON BEHALF OF THE APPELLANTS

Mr Brown stated that he wished to make two additional points. Firstly he stated that it was simply not correct to say that the first complaint was only to do with conveyancing and that there was partial resolution of that complaint. He stated that it was necessary to draw a distinction between the complaints. There was the matter of the conveyancing and the fee note generally and secondly the specific complaint regarding the failure to produce a breakdown. He submitted that it was as plain as it could possibly be from the Law Society correspondence with Mr A and the

Ombudsman's decision that very substantial consideration was given to the issue of the fees and the fee note.

Mr Brown referred the Tribunal to the letter of 1st May 2004. He submitted there was no doubt that it was capable of being read as raising a question of fees generally. He submitted that it does not break down to the very specific complaint as is before the Tribunal now, however lay complainers cannot be expected to be specific. However, he submitted that the issue of possible overcharging was dealt with by the Law Society when they enclosed the leaflet regarding taxation with their response to Mr A's complaint dated 1st May 2004. The second head of complaint regarding going straight to court without asking for the money was a misunderstanding of status of the Auditor's Certificate and that was dealt with by the case manager and the Ombudsman upheld that. Also the allegation regarding money being demanded under threat of interest being due if not made, that issue was dealt with by the Law Society also. Mr Brown submitted that what we are left with in the letter of complaint dated 1st May 2004 were the words "was not itemised". Mr Brown submitted that if this was a head of complaint, there was every opportunity in the discussions between Mr A and the case manager and between Mr A and the Ombudsman when they met for Mr A to have raised this issue. Mr Brown submitted that the Law Society categorised the complaint in their correspondence with Mr A and that he did not challenge that and say that his request for an itemised bill was ignored. Mr Brown submitted that the complaint was raised, it was ventilated and adjudicated upon and for Mr Reid to suggest that the letter of 1st May 2004 is nevertheless the foundation for the second complaint simply cannot be the case in the light of what was stated in Law Society's own letter dated 19th July 2005.

Mr Brown then turned to his second point, the issue of the original fee note. Mr Brown stated that the Answers assert that the fee note itself is inadequate and he stated that Mr Reid has made that submission today. Mr Brown submitted this is not a line open to Mr Reid as the complaint specified by the Law Society was not in relation to an inadequate fee note *per se*, it was a complaint regarding refusal to subsequently provide a breakdown of the fee note. Mr Brown submitted that for Mr Reid to assert that the fee note is inadequate *per se* is wrong, as this was not part of the decision by the Reporter. Indeed the Reporter states that there was no failure in

relation to the issuing of the fee note itself. Mr Brown submitted that there is specific guidance in the Table of Fees which states that there is an obligation to provide detail when the client asks. He submitted that the client file lodged by the Appellants illustrates that the level of reporting to the clients was so conspicuous that the clients must have known the amount of work which had been carried out. Mr Brown also referred to the covering letter with the fee note which asked the B's to telephone the Appellants on receipt of that letter. Mr Brown submitted that there was never an issue with the issuing of the fee note. It was paid within a month without query. Mr Brown renewed his motion that the Tribunal should quash the Determination.

DECISION

The Tribunal considers that the letter of 1st May 2004 did not contain a complaint regarding a lack of information as to the detail of the work done. It was a complaint that notwithstanding the substantial expenditure of the fees, the funds had been spent fruitlessly, whereas a neighbour had apparently managed to have his matter resolved. The Tribunal considers that the letter of 28th November 2004 from the MSP was the only request for detail prior to the formulation and intimation of the heads of complaint. The Tribunal, on the information available, finds as a fact that the only mandate received by the Appellants related to the titles and documents held by them. There was no mandate in relation to a complaint about the level of fees. The Tribunal notes that the Appellants could have been criticised for providing information to a third party in the absence of an effective mandate. The Tribunal endorsed the expressed joint view that what occurred after the heads of complaint were formulated and intimated to the Appellants cannot be prayed as proof in respect of the complaint as intimated. If the Tribunal were minded to find that the Society were entitled to make a Determination of Inadequate Professional Service then such post-complaint evidence might well affect the penalty and any compensation or might form the basis for a new complaint. What occurs thereafter cannot be proof of what is alleged to already have occurred.

The suggestion that the fee note itself issued along with the covering letter, contained such a paucity of information that on their own constituted a failure to communicate effectively with the client and thereby deserved a finding of inadequate professional

service is not accepted for two reasons. Firstly there has to be an assessment of the information given to the client in the course of acting and the file lodged showed an extremely high level of reporting to the clients regarding the work being carried out on their behalf. Secondly, in any event, in the view of the Tribunal what was contained in the fee note alone was sufficient to meet the requirements of the Code of Practice on communicating effectively with the client. Accordingly the Tribunal uphold the Appeal and Quash the Determination and Direction of the Law Society.

The Tribunal heard submissions from both parties on the matter of expenses.

The Tribunal did not consider that there was any matter of complexity to justify the instruction of Junior Counsel. In reaching this decision the Tribunal noted that it was impossible to assess the necessity of the preparation of submissions that were never advanced before the Tribunal. Accordingly the Tribunal repelled the motion for sanction for the expenses of instructing Junior Counsel. In respect of the question of expenses generally, the Tribunal find the Law Society liable for the expenses of the Appellants and of the Tribunal as calculated on the usual basis. In awarding expenses against the Law Society the Tribunal had regard to the English case of Baxendale-Walker-v-The Law Society decided on 30th March 2006, and even accepting that that case is a persuasive authority, the Tribunal find that there are sufficient circumstances to make an award of expenses in this case on the basis that the Law Society did determine the complaint of 1st May 2004 and the Tribunal had difficulty in determining facts that would have merited consideration of the matter anew insofar as the matter related to the absence of detail in relation to the account as issued and paid.

Chairman