

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

FINDINGS

in Complaint

by

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

against

**ALEXANDER MUIR, Flat G/R 36
Darnley Road, Glasgow**

1. A Complaint dated 27 April 2007 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, Alexander Muir, Flat G/R 36 Darnley Road, Glasgow (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 21 June 2007 and notice thereof was duly served on the Respondent. This notice was returned by the Post Office and accordingly a fresh notice of hearing was sent fixing a hearing for 23 August 2007.
4. When the Complaint called on 23 August 2007 the Complainers were represented by their Fiscal, Paul Reid. The Respondent was not present or represented. After hearing evidence from the Clerk with regard to service of the Complaint and the notice of hearing, the Tribunal resolved

to proceed in the Respondent's absence. The fiscal asked the Tribunal to allow evidence by way of affidavit in terms of Rule 9 of the Tribunal Rules. This was agreed.

5. The fiscal led the affidavit evidence of one witness and referred the Tribunal to various Productions.

6. The Tribunal found the following facts established

6.1 The Respondent was born 10th January 1960. He was admitted as a solicitor on 13th April 1983. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 5th May 1983.

6.2 Mr & Mrs A consulted with the Respondent, a solicitor, in connection with a conveyancing matter. They were disappointed with the manner in which the Respondent acted in connection with those instructions as a result of which they invoked the aid of the Complainers. The Complainers obtained sufficient information from the clients to allow them to formulate and intimate a complaint to the Respondent. The process of investigating the complaint commenced.

6.3 On 21st November 2006, the Complainers acting through a Client Relations Committee, determined in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 to uphold the Complaint at the instance of Mr & Mrs A, an inadequate professional service had been provided to them by the Respondent. The Complainers further determined in terms of Section 42A(2)(d) of the said 1980 Act, that the Respondent should pay compensation of £200 to Mr & Mrs A. This determination was intimated to the Respondent by letter dated 1st November 2006. Payment of compensation was not forthcoming. As a consequence, a formal statutory notice in terms of Section 42B of the Solicitors (Scotland) Act 1980 was intimated to the Respondent by recorded delivery on 18th January 2007. Despite the intimation of this formal statutory

notice, payment of the award of compensation was not forthcoming. An Appeal had not been marked by the Respondent against the determination. The determination remains outstanding.

7. Having considered the foregoing and submissions from the fiscal, the Tribunal found the Respondent had failed to comply with the determination and direction given by the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 in respect of Mr & Mrs A within the period specified. The Tribunal resolved to make an Order in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980 and issued an Interlocutor in the following terms:-

Edinburgh 23 August 2007. The Tribunal having considered the Complaint dated 27 April 2007 at the instance of the Council of the Law Society of Scotland against Alexander Muir, Flat G/R 36 Darnley Road, Glasgow; Find that the Respondent has failed to comply with the determination and direction given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified; Direct that an Order be issued under Section 53C(2) 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 an 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)

Gordon Cunningham
Chairman

8. 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 Council of the Law Society of Scotland had made a determination under Section 42A of the Solicitors (Scotland) Act 1980 which was not appealed by the Respondent. A Complaint was then made to the Tribunal under the provisions of Section 53C(2) 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 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.

The Respondent did not lodge answers nor attend the Tribunal. The Tribunal heard evidence from the Clerk to the effect that the Complaint had been served on the Respondent by Recorded Delivery and not returned. The notice of hearing for the 23 August 2007 had been served on the Respondent by a Sheriff Officer. The fiscal advised the Tribunal that he was satisfied that the Respondent was at the address in the Complaint and that he had corresponded with him at this address but had no reply. Mr Reid confirmed that he had sent a copy of the affidavit to the Respondent. Mr Reid asked the Tribunal to allow affidavit evidence in terms of Rule 9 given that the Respondent had not lodged answers or attended the Tribunal. This was agreed.

The fiscal referred to the affidavit evidence of Gillian Martin, Case Manager with the Client Relations Office of the Law Society. Ms Martin states in her affidavit that she was responsible for the administration of the Complaint at the instance of Mr and Mrs

A against the Respondent. Ms Martin confirms in her affidavit that she obtained information from Mr & Mrs A who identified heads of Complaint which were intimated to the Respondent. On the 21 November 2006 the Client Relations Committee J determined in terms Section 42A(1) of the Solicitors (Scotland) Act 1980 that an inadequate professional service had been provided to Mr & Mrs A by the Respondent. The Committee further determined in terms of Section 42A(2)(d) of the said Act that a sum of £200 should be paid to Mr & Mrs A by the Respondent. The witness refers to Production 1 being an extract of minute of the meeting of the Client Relations Committee. Ms Martin also confirms in her affidavit that she wrote to the Respondent on 1 December 2006 advising him of the outcome of the Client Relations Committee meeting and informing him that the award of compensation had to be paid and asking that he comply with the determination within 21 days. Ms Martin confirmed that the compensation was not paid and that the Respondent did not appeal the determination. Another letter was sent to the Respondent on 18 January 2007 by Recorded Delivery giving a notice under Section 42B of the said Act. Ms Martin confirms in her affidavit that the determination remains outstanding.

Mr Reid asked the Tribunal to grant the application for the Order under Section 53C of the said Act.

DECISION

The Tribunal was satisfied beyond reasonable doubt on the basis of the evidence provided by the Law Society that the Respondent had failed to comply with the determination and direction of the Law Society in respect of Mr & Mrs A and accordingly determine that an Order under Section 53C should be issued. The Tribunal made the usual Order with regard to publicity and expenses.

Chairman