

**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**

**PAUL GERARD KIRK, of 748a  
Old Edinburgh Road, Viewpark,  
Uddingston, Glasgow**

1. A Complaint erroneously dated 25 January 2007 which should have been dated 25 January 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Paul Gerard Kirk, of 748a Old Edinburgh Road, Viewpark, Uddingston, 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 27 March 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 27 March 2008. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented.

5. After hearing evidence with regard to service of the complaint and the notice of hearing, the Tribunal resolved to proceed in the Respondent's absence. As no Answers had been lodged by the Respondent, the Tribunal agreed to allow the Fiscal to lead evidence by way of affidavit evidence in terms of Rule 9 of the Tribunal's Rules and evidence in the form of an affidavit from Caroline Robertson, Law Society Case Manager was laid before the tribunal.
  
6. The Tribunal found the following facts established
  - 6.1 The Respondent was born on 4 April 1959. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 2 December 1981. The Respondent was formerly a partner in the firm of Messrs Guarino & Kirk, Solicitors, Glasgow. On or about 1 February 2002 the Respondent resigned as a partner with that firm and assumed the role of a sole practitioner trading as the firm Paul Kirk & Company, Solicitors with offices in Uddingston and Glasgow. As at 1 March 2006 the name of the Respondent was removed from the Roll of Solicitors at his own request.
  
  - 6.2 Miss A resides at Property 1. She consulted the Respondent in connection with a claim for reparation following an accident which occurred in or about November 2002. She was disappointed with the manner in which the Respondent acted in connection with her instructions. As a consequence she invoked the aid of the Complainers. The Complainers obtained sufficient information from her to allow them to formulate and intimate a complaint to the Respondent. Thereafter the process of investigating the complaint proceeded.
  
  - 6.3 On 12 December 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 that

an inadequate professional service had been provided by the Respondent to his client. Thereafter they made the following directions:-

- (a) In terms of Section 42A(2)(a)(i) of the said 1980 Act that the fees or outlays to which the Respondent was entitled should be abated in full.
- (b) In terms of Section 42A(3) of the said 1980 Act that any fees previously paid to the Respondent in connection with the services rendered should be refunded.
- (c) In terms of Section 42A(2)(d) of the said 1980 Act, the Respondent should pay compensation to Miss A of the sum of £1,000.

6.4 The determination was intimated to the Respondent by letter dated 19 December 2006. The Respondent failed to comply with the determination in any respect. 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 16 February 2007. Despite intimation of this Formal Statutory Notice, the Respondent has failed to implement the determination in any respect. An Appeal has not been marked by the Respondent against the determination. The determination therefore remains outstanding.

7. The Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 27 March 2008. The Tribunal having considered the Complaint erroneously dated 25 January 2007, which should have been dated 25 January 2008, at the instance of the Council of the Law Society of Scotland against Paul Gerard Kirk, of 748a Old Edinburgh Road, Viewpark, Uddingston, Glasgow; Find that the Respondent has

failed to comply with the Determination and Direction given by the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified; Direct that an Order under Section 53C of the said Act be issued; 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 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 will be given to this decision and that this publicity should include the name of the Respondent.

**(signed)**

**Alistair Cockburn**

**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 Respondent did not lodge Answers to the Complaint. The Tribunal heard evidence from the Depute Clerk that the complaint was sent to the Respondent by recorded delivery mail on 4 February 2008. The Depute Clerk confirmed that a printout had been obtained from Royal Mail's track and trace system which indicated that the complaint had been delivered on 7 February 2008. The Tribunal heard evidence from the Depute Clerk that the notice of hearing was sent to the Respondent by recorded delivery mail. The Depute Clerk confirmed that a printout had been obtained from the Royal Mail's track and trace system which indicated that the notice had been signed for on 1 March 2008 at the Respondent's address by Ms B. In the circumstances Mr Reid asked the Tribunal to allow him to lead evidence by way of affidavit and this was agreed.

**EVIDENCE FOR THE COMPLAINERS**

Mr Reid referred the Tribunal to the affidavit evidence of Caroline Robertson, Case Manager with the Law Society's Client Relations Department. Ms Robertson's affidavit confirmed the Respondent's employment history and confirmed that in her capacity as Case Manager she received a complaint from a former client of the Respondent, a Miss A in connection with the manner in which the Respondent had dealt with her affairs. The matter eventually called before the Client Relations Committee who determined that the Respondent had provided an inadequate professional service and that fees and outlays to which the Respondent was entitled should be abated in full, that any fees previously paid to the Respondent in connection with the services rendered should be refunded to Miss A and that the Respondent should pay compensation to Miss A in the sum of £1,000. Ms Robertson's affidavit refers to a letter dated 19 December 2006, which was lodged with the Tribunal as a production, sending the Respondent a copy of the Committee's decision and asking him to comply with the Determination within 21 days.

Ms Robertson's affidavit also refers to a letter sent on 16 February 2007 by recorded delivery post; this letter was written in terms of Section 42B of the Solicitors (Scotland) Act 1980 calling upon the Respondent to provide confirmation that he had

made payment of the compensation. This letter was also lodged as a production. Ms Robertson confirms in her affidavit that despite this letter being sent the award of compensation has still not been paid.

Mr Reid stated that it was clear from the affidavit evidence and the productions lodged that the Determination and Direction had been made and the Respondent had failed to comply with it and he asked the Tribunal to make an Order under Section 53C.

In response to a question from the Tribunal, Mr Reid advised that the word “refused” in paragraph 3(b) of the Affidavit should in fact read “repaid”.

## **DECISION**

The Tribunal was satisfied that the Respondent was aware of the complaint and the hearing. The Tribunal noted that the Respondent had not seen fit to lodge Answers or attend the Tribunal hearing. The Tribunal was satisfied beyond reasonable doubt on the basis of the productions and the affidavit evidence lodged that the Respondent had failed to comply with the Determination and Direction of the Law Society. The Tribunal accordingly proceeded to make an Order under Section 53C of the Solicitors (Scotland) Act 1980. The Tribunal made the usual order with regard to expenses and publicity.

**Chairman**