

**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

**WILLIAM MICHAEL LEWIS,
Solicitor, 1 Hope Park Terrace,
Edinburgh**

1. A Complaint dated 27 March 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that, William Michael Lewis, Solicitor, 1 Hope Park Terrace, Edinburgh (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 17 June 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 17 June 2008. The Complainers were represented by their Fiscal, Walter Muir, Solicitor, Ayr. The Respondent was present and represented by Mr J McCann, Solicitor, Clydebank.

5. A Joint Minute was lodged admitting the averments contained in the Complaint as amended. No evidence was led.

6. The Tribunal found the following facts established

6.1 The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He was born on 7th November 1957. He was admitted as a solicitor on 31st March 1982 and enrolled as a solicitor on 22nd April 1982. He was until 31st August 2007 the sole principal of the firm of Gilmore Lewis which firm has a place of business at 1 Hope Park Terrace, Edinburgh. He does not at present hold a practising certificate.

Mr A

6.2 On 11th January 2007 the Complainers made a determination in terms of Section 42A(1) of the Solicitors (Scotland) Act 1980 (“the Act”) that the firm of Gilmore Lewis (“the firm”) had provided an inadequate professional service to Mr A. The Complainers then further determined in terms of Section 42A (2)(a)(ii) of the Act that the amount of fees charged by the said firm should be restricted by 75% exclusive of VAT and they directed in terms of Section 42A(3) of the Act that the firm refund to Mr A the fees paid by him in order to comply with this restriction . The Respondent was the sole principal of the firm when this inadequate professional service was provided to Mr A. By letter dated 11th January 2007 the Complainers intimated these determinations and directions to the Respondent. He did not appeal them. On 12th June 2007 the Complainers wrote to him giving him notice in terms of Section 42B(1)(a) of the Act calling upon him to provide confirmation to them of the steps he had taken to implement them within a period of 21 days from that date. The Respondent failed to

provide this confirmation and he has still not implemented them.

The Executors of the late Mrs B

- 6.3 On 1st February 2007 the Complainers made a determination in terms of Section 42A(1) of the Act that the firm had provided an inadequate professional service to the estate of the late Mrs B. They subsequently determined in terms of Section 42A(2)(a)(ii) of the Act that the fees and outlays to which the firm is entitled for work carried out in the transaction in which this inadequate professional service had taken place should be abated by 75%. They also directed in terms of Section 42A(3) of the Act that the firm refund to the estate or waive the fees and outlays which it had rendered to the extent of 75% and they also directed the firm in terms of Section 42A(2)(c) of the Act to send to the solicitors acting for the Executors the relevant files and documentation within 4 weeks of intimation of instruction and to meet the fees of these solicitors within 4 weeks of the date of receipt of an invoice in respect of their fees. The Respondent was the sole principal of the firm when this inadequate professional service was provided to the late Mrs B. By letter dated 19th June 2007 the Complainers intimated these determinations and the said direction to him. He did not appeal them. On 11th July 2007 the Complainers wrote to him giving him notice in terms of Section 42B(1)(a) of the Act calling upon him to provide confirmation to them of the steps he had taken to comply with these determinations and the said direction and that within 21 days from that date. The Respondent failed to provide this confirmation and he has still not implemented them.

Mr C

6.4 On 4th October 2007 the Complainers made a determination in terms of Section 42A(1) of the Act that the firm had provided an inadequate professional service to Mr C. The Complainers then further determined in terms of Section 42A(2)(a)(i) of the Act that the firm's entitlement to fees and outlays for work carried out in the transaction in which this inadequate professional service had taken place should be abated to nil. They then directed in terms of Section 42A(3) of the Act that the firm refund all fees paid to it by Mr C in relation to this transaction. They then also determined in terms of Section 42A(2)(a)(ii) of the Act that the firm refund to Mr C the entire outlays paid to it unless it could demonstrate that these outlays had been paid to the appropriate third parties. They then also directed in terms of Section 42A(2)(d) of the Act that the firm pay to Mr C the sum of £1000 by way of compensation. The Respondent was the sole principal of the firm when this inadequate professional service was provided to Mr C. By letter dated 18th October 2007 the Complainers wrote to the Respondent intimating these determinations and directions to him. He did not appeal them. On 12th December 2007 the Complainers wrote to him giving him notice in terms of Section 42B(1)(a) of the Act calling upon him to provide confirmation to them of the steps he had taken to comply with them and that within 21 days from that date. The Respondent failed to provide this confirmation and he has still not implemented them.

Mrs D

6.5 On 1st November 2007 the Complainers made a determination in terms of Section 42A(1) of the Act that the firm had provided an inadequate professional service to Mrs D. The Complainers then further determined in terms of Section 42A(2)(a)(i) of the Act that the firm's entitlement to fees for

work carried out in one of the two transactions in which this inadequate professional service had taken place should be abated to nil. They then directed in terms of Section 42A(3) of the Act that the firm refund any fees paid to it by Mrs D in relation to this transaction. They then also determined in terms of Section 42A(2)(a)(ii) of the Act that the firm's entitlement to fees in the other transaction be restricted to £150 plus VAT and they then directed the firm in terms of Section 42(3) of the Act to refund to Mrs D fees paid by her in order to comply with this restriction. They then also directed in terms of Section 42A(2)(c) of the Act that the firm deliver to Mrs D's new agents the files sought under a mandate dated 5th June 2007 and that within 14 days of intimation of the determination to the firm. They then also directed the firm in terms of Section 42A(2)(d) of the Act to pay to Mrs D the sum of £2500 by way of compensation for all of the inadequate professional service in relation to these transactions. The Respondent was the sole principal of the firm when this inadequate professional service was provided to Mrs D. By letter dated 26th November 2007 the Complainers wrote to the Respondent intimating these determinations and directions to him. He did not appeal them. By letter dated 9th January 2008 the Complainers gave notice to him in terms of Section 42B(1)(a) of the Act calling upon him to provide confirmation to them of the steps he had taken to implement them and that within 21 days from that date. The Respondent failed to provide this confirmation and did not implement them save for one file which was handed over to Mrs D sometime in or about the beginning of March 2008 when she went to the offices of Hadden Rankin (who are believed to be employing the Respondent at present and who are trading from the premises referred to in paragraph 1) as a result of the Respondent's long standing failure to implement the aforementioned mandate. The Complainers believe that the

Respondent has only partially implemented the aforementioned direction in relation to the delivery of files.

Mr E

- 6.6 On 9th October 2007 the Complainers made a determination in terms of Section 42A(1) of the Act that the firm had provided an inadequate professional service to Mr E. The Complainers then directed in terms of Section 42A(2)(c) of the Act that the firm pay to Mr E the sums of £708.01 and £37.01 in connection with costs incurred by him as a result of this inadequate professional service and they further directed in terms of Section 42A(2) of the Act that the firm pay to him the sum of £400 by way of compensation. The Respondent was the sole principal of the firm when this inadequate professional service was provided to Mr E. By letter dated 30th October 2007 the Complainers intimated this determination and these directions to the Respondent. He did not appeal them. On 21st December 2007 the Complainers wrote to him giving him notice in terms of Section 42B(1)(a) of the Act calling upon him to provide confirmation to them of the steps he had taken to implement them and that within 21 days from that date. The Respondent failed to provide this confirmation and he has still not implemented them.

Mr and Mrs F

- 6.7 On 18th December 2007 the Complainers made a determination in terms of Section 42A(1) of the Act that the firm had provided an inadequate professional service to Mr and Mrs F. The Complainers then determined in terms of Section 42A(2)(a)(i) of the Act that the firm's entitlement to fees and outlays in connection with the transactions in which this inadequate professional service had taken place should be abated to nil and

they also then directed in terms of Section 42A(3) of the Act that any fees and outlays in connection with the inadequate professional service should be entirely waived. They then also directed the firm in terms of Section 42A(2)(d) of the Act to pay to Mr and Mrs F the sum of £5000 by way of compensation. The Respondent was the sole principal of the firm when this inadequate professional service was provided. By letter dated 10th January 2008 the Complainers intimated these determinations and directions to the Respondent's agent. The Respondent did not appeal them. On 3rd March 2008 the Complainers wrote to the Respondent's agent giving the Respondent notice in terms of Section 42B(1) of the Act calling upon him to provide confirmation to them of the steps had taken to implement them and that within 21 days from that date. The Respondent has failed to provide this confirmation and he has still not implemented them.

7. Having considered the foregoing circumstances and having heard submissions from the Complainers and the Respondent's Representative, the Tribunal found that the Respondent had failed to comply with the Determinations and Directions given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 in respect of Mr A, The Executors of the late Mrs B, Mr C, Mrs D, Mr E and Mr and Mrs F within the periods specified. The Tribunal resolved to make Orders in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980 and issued an Interlocutor in the following terms:-

Edinburgh 17 June 2008. The Tribunal having considered the Complaint dated 27 March 2008 at the instance of the Council of the Law Society of Scotland against William Michael Lewis, Solicitor, 1 Hope Park Terrace, Edinburgh; Find that the Respondent has failed to comply with the Determinations and Directions given by the Council of the Law Society of Scotland under Section 42A of the Solicitors (Scotland) Act 1980 within the respective periods specified; Direct that

Orders be issued under S53C 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)

David Coull
Vice 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

Vice Chairman

DECISION

The Council of the Law Society of Scotland had made Determinations and Directions under Section 42A of the Solicitors (Scotland) Act 1980 which were not appealed by the Respondent. A Complaint was then made to the Tribunal under the provisions of Section 53C of the said Act. By a Joint Minute the Respondent accepted all the averments in the Complaint. Mr McCann on behalf of the Respondent indicated that the Respondent accepted that he had failed to comply with the Determinations and Directions of the Law Society. The Tribunal was accordingly satisfied that the Respondent had failed to comply with the Determinations and Directions of the Law Society. The Tribunal resolved to issue Orders under Section 53C. The Tribunal also found the Respondent liable in the expenses of the proceedings. As the disposal of this Complaint constitutes a decision for the purposes of the Fourth Schedule to the Solicitors (Scotland) Act 1980, the Tribunal is required in terms of Paragraph 14 of the Schedule to give publicity to this decision.

Vice Chairman