

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

**STUART FRASER WILSON,
Solicitor of S.F. Wilson & Co., 28
Moss Street, Paisley**

1. A Complaint dated 25 April 2008 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society (hereinafter referred to as "the Complainers") requesting that Stuart Fraser Wilson, Solicitor, of S.F. Wilson & Co., 28 Moss Street, Paisley (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 26 June 2008 and notice thereof was duly served on the Respondent.
4. The hearing took place on 26 June 2008. The Complainers were represented by their Fiscal, Paul Reid, Solicitor, Glasgow. The Respondent was not present or represented.

5. After hearing evidence from the Depute Clerk with regard to service of the Complaint and the Notice of Hearing, the Tribunal resolved to proceed in the Respondent's absence. The Tribunal noted that no Answers had been lodged by the Respondent. The Tribunal allowed the Fiscal's motion to lead evidence by way of affidavit in terms of Rule 9 of the Tribunal's Rules. Affidavit evidence from Fiona Robb, the Law Society's Case Manager was lodged.

6. The Tribunal found the following facts established

6.1 The Respondent was born 29 April 1966. He was admitted as a solicitor on 1 November 1989. He was enrolled as a solicitor in the Register of Solicitors in Scotland on 20 November 1989. Between 20 November 1989 and 30 November 1992, he was employed with the firm Beattie & Company, Solicitors. From 1 December 1992 to date he has practised as a sole practitioner trading as S.F. Wilson & Co, Solicitors, of 28 Moss Street, Paisley.

Mrs A

6.2 Mrs A resides in Newcastle-Upon-Tyne. She formerly resided in Wishaw, Lanarkshire. She consulted the Respondent in connection with matters arising as a consequence of her separation. 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 and administering the complaint proceeded.

6.3 On 29 January 2008 the Complainers, acting through a Clients 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 determinations:

- (a) In terms of Section 42A(2)(a)(i) of the said 1980 Act that the Respondent should be entitled to no fee in relation to the service provided.
- (b) In terms of Section 42A(3)(a) of the said 1980 Act that the Respondent refund wholly any amount paid to him by the Scottish Legal Aid Board in respect of professional fees in connection with the service provided.
- (c) In terms of Section 42A(2)(d) of the said 1980 Act that the Respondent should pay to Mrs A compensation amounting to £900.

6.4 The determination was intimated to the Respondent by letter dated 6 February 2008. No reply was received from the Respondent. 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 4 March 2008. 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. Having considered the foregoing circumstances, the Tribunal found that the Respondent had 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 in respect of Mrs A within the period specified; and the Tribunal resolved to make an Order in terms of Section 53C(2) of the Solicitors (Scotland) Act 1980.

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

Edinburgh 26 June 2008. The Tribunal having considered the Complaint dated 25 April 2008 at the instance of the Council of the Law Society of Scotland against Stuart Fraser Wilson, Solicitor of S.F. Wilson & Co., 28 Moss Street, Paisley; Find that the Respondent failed to comply with the Determination and Direction given by the Law Society of Scotland on 29 January 2008 under Section 42A of the Solicitors (Scotland) Act 1980 within the period specified; Direct that an Order be issued under Section 53C 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 £14.00; 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

9. 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 was not present or represented at the hearing. He 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 8 May 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 10 May 2008. The Tribunal heard evidence from the Depute Clerk that the Notice of Hearing was sent to the Respondent by recorded delivery mail on 27 May 2008. 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 29 May 2008 at the Respondent's address by Mr B. In the circumstances Mr Reid made a motion to allow him to lead evidence by way of affidavit and the Tribunal agreed to grant his motion.

EVIDENCE FOR THE COMPLAINERS

Mr Reid referred the Tribunal to the affidavit evidence of Fiona Robb, Case Manager with the Law Society's Client Relations Department. Mrs Robb's affidavit advised that in her capacity as Case Manager she received a complaint from a former client of the Respondent. Mrs A had consulted the Respondent in connection with matters arising as a consequence of her separation. She was disappointed with the manner in which the Respondent dealt with these instructions. The matter was considered by a Client Relations Committee who determined that the Respondent had provided an inadequate professional service and that the Respondent should be entitled to no fee in relation to the service provided, that the Respondent should refund in full any amount paid to him by the Scottish Legal Aid Board in respect of fees in connection with the services provided and that the Respondent should pay the sum of £900 by way of compensation to Mrs A.

Mrs Robb's affidavit referred to a letter dated 6 February 2008 which was lodged with the Tribunal as a production. That letter sent the Respondent a copy of the Committee's decision and asked him to comply with the determination within 21 days.

Mrs Robb's affidavit also referred to a letter sent to the Respondent on 4 March 2008 by recorded delivery post; this letter was written in terms of Section 42B of the Solicitors (Scotland) Act 1980 and called upon the Respondent to provide confirmation that he had made payment of the compensation. This letter was also lodged as a production. Mrs Robb confirmed in her affidavit that despite this letter being sent the award of compensation still has not been paid.

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

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