

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

FINDINGS

in Complaint
by

THE COUNCIL OF THE LAW SOCIETY
OF SCOTLAND

against

PETER JAMES LIDDELL and MRS SHEENAGH DONALDSON,
both Solicitors, 84 Commercial Street, Dundee,

1. A Complaint dated 16th May 1996 was lodged with the Scottish Solicitors' Discipline Tribunal by the Council of the Law Society of Scotland (hereinafter referred to as "the Complainers") requesting that Peter James Liddell and Mrs Sheenagh Donaldson, both solicitors, 84 Commercial Street, Dundee (hereinafter referred to as "the First Respondent" and "the Second Respondent" respectively) 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 they might think right.
2. The Tribunal caused a copy of the Complaint as lodged to be served upon each Respondent. No Answers were lodged by either Respondent within the induciae.
3. In terms of their Rules, the Tribunal appointed the Complaint to be heard on 24th July 1996 and notice thereof was duly served upon each Respondent. Answers were tendered late on behalf of the First Respondent.

4. The Hearing took place on 24th July 1996. The Complainers were represented by Mr ILS Balfour SSC, Edinburgh as Fiscal. The First Respondent was represented by Mr James A McCann, Solicitor, Clydebank. The Second Respondent was represented by Mr N.G.M. Boyd, Advocate. A Medical Certificate was produced in relation to the Second Respondent and the Tribunal resolved to proceed in her absence. The Tribunal granted leave to the Fiscal to withdraw certain charges which were not admitted and the Tribunal found the following facts established:-

- (1) The Respondents are both solicitors enrolled in the Register of Solicitors in Scotland. Between 12th December 1988 and 31st October 1995 they practised as partners of Messrs Donaldson & Co, Solicitors, 811 Commercial Street, Dundee. Since 1st November 1995 the First Respondent has continued the practice under the same name as a sole practitioner, the Second Respondent having not renewed her Practising Certificate on that date.

The Law Society of Scotland

- (2) At an inspection of the Respondents' books on 21st April 1993, the Law Society's inspector asked the Respondents to disclose to him the source of £64,700 of capital introduced by them into the business between 16th August 1991 and 3rd March 1993 namely:-

(a) £39,000 paid in by the First Respondent, and

(b) £25,700 paid in by the Second Respondent.

- (3) By letter dated 7th May 1993, the First Respondent produced vouchers for £34,286 leaving £4,714 on which the Law Society still sought his comment. By letter dated 1st June 1993, the Second Respondent certified the source of only £10,000 of her capital. Accordingly the Law Society wrote separately to the Respondents on 21st June 1993 seeking their comments on "a series of entries shown on the partners' capital account where £39,000 of capital was introduced by Mr Liddell and £25,700 being introduced by Mrs Donaldson". The letter went on to suggest how the funding might be vouched. The Respondents attended an interview by the Guarantee Fund Committee on 28th June 1993. By October 1993, the Law Society was satisfied regarding the funds introduced by the First Respondent. In correspondence over the following months, the Law Society was eventually satisfied with the source of the Second Respondent's funding. The Law Society was led to believe that their reasonable inquiry had been fully answered.
- (4) In February 1995, a Mr "A" produced to the Law Society a letter signed by both Respondents, dated 29th May 1992, referring to a personal loan to the Respondents of £10,000. The Law Society re-opened their inquiry and ascertained that on 16th August 1991 the First Respondent had accepted a cheque for £8,545 from Mr "A" and the Second Respondent a further cheque for £1,455. The cheques has been made payable to the First Respondent and Second Respondent as individuals. They had then drawn personal cheques in favour of the firm. After the total of £10,000 had been thus lodged in the firm account,

£5,000 of it was transferred on the same day to practice capital. It was 22nd June 1995 before the First Respondent on behalf of the partnership confirmed to the Law Society that £5,000 of the £10,000 received from Mr "A" on 16th August 1991 had been introduced into the business as capital.

"A"

- (5) The £10,000 had been lent by Mr "A" before he became a client of the Respondents' firm. Between April and October 1994, the Respondents did legal work for Mr "A" in relation to a development of flats and offices at "P.1". Their fees for that work and for the sale of properties at "P.2", had been deducted from the balance of the £10,000 due to Mr "A". In November 1994, Mr "A" instructed Messrs Thorntons, Solicitors, Dundee who wrote to the Respondents' firm on 11th November 1994 requesting a full accounting. They sent reminders on the 25th and 30th of that month. Mr "A" remained dissatisfied and he referred the matter to the Law Society. On 9th March 1995, the Second Respondent replied to the correspondence which she had received from the Law Society.
- (6) On 1st June 1995, the Second Respondent wrote to Mr "A's" new solicitors Messrs Miller Henry, "... since it appears your client is unable to recollect previous accountings, we shall supply a further accounting within seven days once we have updated our previous calculations". The Second Respondent also stated "...that there are fees outstanding..." The Respondents had not acted for Mr "A" for the last eight months and

any statement of intromissions, previously supplied, should have been complete. Even when the Second Respondent sent a statement of intromissions on 16th June 1995, she said that "...the accounting does not include fees due for other work carried out for Mr "A"".

Miss "B"

- (7) On 27th November 1993, Miss "B" who was a student in Dundee, made a verbal offer to "C" for a flat which they were selling at "P.3". At that date, Miss "B" was not a client of the Respondents. The price for the flat was agreed and "C" recommended to Miss "B" that the Respondents' firm should act for her in the purchase. She agreed. On 3rd December 1993 the First Respondent, without communicating in any way with Miss "B" submitted an offer on her behalf to "C"
- (8) On 17th December 1993, the First Respondent on behalf of an existing client of the firm, Miss "D", the seller of the property, dictated a qualified acceptance of the offer which he himself had submitted on behalf of Miss "B". The Second Respondent then took over the file and wrote to Miss "B" with a copy of the offer and a copy of the acceptance.

- (9) On 14th December 1993 the First Respondent and on 17th December the Second Respondent, sent to the respective parties, a letter purporting to satisfy the requirements of Rule 5(2) of the Solicitors (Scotland) Practice Rules 1986. Nevertheless the Respondents contravened the said Rule 5 in that they acted for the purchaser and seller in a conveyancing transaction in circumstances where none of the exceptions set out in that Rule were applicable.
- (10) On 21st December 1993, prior to the conclusion of missives, Miss "B's" father having noted that the property had been altered, asked about planning consent, building warrant and completion certificates. He asked also about "the method of apportionment and arrangements for paying common repairs". The Second Respondent replied on the following day, saying that the documentation should be with the title deeds and that once she had received the titles, "I will be writing to your daughter confirming the share of liability for repairs...". Mr "B" faxed her the following day, expressing concern about both aspects, but the Second Respondent faxed back on the same day reassuring him. At the same time she gave the First Respondent a letter as part of the missives, imposing the condition that building warrants and completion certificates or equivalent would be delivered at settlement. Missives were concluded on 31st December 1993. The missives included a requirement on the seller to exhibit Local Authority Building Consents or Warrants and the usual clause about the maintenance of common items in the tenement on some equitable basis.

(11) On 5th January 1994 the Second Respondent wrote to Miss “B”, reporting that she had now examined the titles, and commenting on mutual repairs and on the absence of building warrants. On 14th January the Second Respondent wrote again to Miss “B” saying that although she still awaited to hear the factoring position and still had to obtain delivery of the outstanding building warrant, there was no reason for delaying entry. Although the Second Respondent had previously acknowledged that the factoring arrangements were unusual, she did not advise Miss “B” what these arrangements were nor did she confirm the position about building warrants.

(12) Throughout the transaction, the communications between the Respondents and Miss “B” were inadequate and constituted an inadequate professional service.

“E”

(13) On 14th January 1993, Mr “E” consulted the Second Respondent about enforcing an order which Mr “E” had himself obtained against neighbours nine months previously, under Section 49(2) of the Civic Government (Scotland) Act, requiring the neighbours to control two dogs. Both the First and Second Respondents made enquiries and both offered advice, which involved rectifying the boundary between Mr “E’s” property and the neighbours’ property. The neighbours then removed a gate and Mr “E” erected a new fence, following which the Respondents heard nothing further from Mr “E”.

- (14) On 6th August 1993, Messrs Carlton Gilruth, Solicitors, Dundee sent the Respondents' firm a mandate by Mr "E" requiring the delivery of all papers. Neither Respondent was able to find the papers which Mr "E" had deposited with them, and on which both of them had worked, particularly the site plan which Mr "E" had obtained when he purchased the property and copies of the deeds which Mr "E" had himself obtained from the General Register of Sasines. Eventually under pressure from Carlton Gilruth, the First Respondent refunded to Mr "E" the cost of replacing the documents. Nevertheless this neglect in having lost or mislaid the documents entrusted to his firm constituted an inadequate professional service.

Mr and Mrs "F"

- (15) By letter dated 20th April 1994, Mr and Mrs "F" invoked the aid of the Law Society about the way in which the Second Respondent was handling their claim in regard to a double glazing problem.
- (16) On 6th May 1994, the Law Society wrote to the Second Respondent suggesting that the concerns of the "Fs" seemed capable of resolution by "conciliation". They asked her whether she would contact the "Fs" or, alternatively, give sufficient information to the Law Society for them to do so. The Second Respondent neither contacted the "Fs" nor replied to the Law Society. On 20th July 1994 the Law Society asked the Second Respondent for a report as the "Fs" were expressing concern. The Second Respondent did not reply to this letter or further

letters dated 29th August and 30th September 1994. As the “Fs” were still pressing for an answer to their complaint, the Law Society on 12th October 1994 served on the Second Respondent a formal notice under Section 42C of the Solicitors (Scotland) Act 1980, requiring an explanation within 21 days. On 1st November 1994, the Second Respondent communicated with the Law Society for the first time.

- (17) Having considered the matter, the Law Society on 23rd November 1994, called on the Second Respondent to send her file and also the address of the "man of skill" involved. The Law Society sent a reminder on 19th January 1995, a formal notice under Section 42C on 13th March 1995 and a further letter on 28th April 1995, before the Second Respondent replied briefly on 24th May 1995. In her letter of that date she claimed that she believed all points had been responded to, but there had not in fact been any communication from her since 1st November 1994.
- (18) On 19th June the Complainers served a further formal notice on the Second Respondent, this time under Section 15(2) of the Solicitors (Scotland) Act 1980, requiring her to send "a satisfactory explanation of the matter and the file's relating to the matter". She did not reply, but on 23rd June 1995 the First Respondent sent the “Fs” file. Only then could the Law Society make any intelligent comment to the “Fs” on the matter which the “Fs” had raised fourteen months before, namely on 20th April 1994. However the Law Society still had no explanation for the Second Respondent's failure to pursue the interests of the “Fs” and on 24th July 1995 they sent a further formal

notice under Section 15(2) of the Solicitors (Scotland) Act 1980 to the Second Respondent requiring her to send "a satisfactory explanation of the matter". As at the date of the Complaint, namely 16th May 1996, the Second Respondent had not replied to the request contained in that notice.

5. Having heard the solicitor for the First Respondent and Counsel for the Second Respondent, the Tribunal found the Second Respondent guilty of professional misconduct in that
 - (a) she failed to respond timeously and openly and accurately to the reasonable enquiries of the Law Society regarding the source of £5,000 introduced into the Respondents' capital account on 16th August 1991,
 - (b) she acted for both the seller and the purchaser in a conveyancing transaction contrary to Rule 5 of the Solicitors (Scotland) Practice Rules 1986, and
 - (c) she delayed unconscionably to respond to the reasonable enquiries of the Law Society in regard to Mr and Mrs "F", and in particular to deliver their file.

6. The Tribunal further found that there had been an inadequate professional service
 - (a) by the Second Respondent in respect of her failure to provide "A" with a full statement of her intromissions,
 - (b) by the First and Second Respondents in failing to communicate adequately with Miss "B", particularly in regard to the factoring arrangement and property certificates and the liability for common repairs, and

- (c) by the First Respondent in that he mislaid or lost papers, plans and other documents which Mr “E” had entrusted to his firm.
7. Having received an undertaking that the Second Respondent would never in the future apply for a Practising Certificate, the Tribunal, having regard to that undertaking, pronounced an Interlocutor in the following terms:-

Edinburgh 24th July 1996. The Tribunal having considered the Complaint at the Instance of the Council of the Law Society of Scotland against Peter James Liddell and Mrs Sheenagh Donaldson, both solicitors, 84 Commercial Street, Dundee, find the Second Respondent guilty of professional misconduct in respect of her unconscionable delay in replying to reasonable enquiries of the Law Society in respect of two separate matters, and her breach of Rule 5 of the Solicitors (Scotland) Practice Rules 1986; Censure the Second Respondent; in respect of the finding that the professional services provided by the Second Respondent to Mr “A” were inadequate, direct the Second Respondent in terms of Section 53A(2)(d) of the Solicitors (Scotland) Act 1980, as amended to pay to the said “A” by way of compensation the sum of £300 and in respect of the finding that the professional services provided by the First and Second Respondents to Miss “B” were inadequate, direct the First and Second named Respondents jointly and severally in terms of the said Section to pay to the said Miss “B” by way of compensation the sum of £200; Find the First

and Second Respondents jointly and severally liable in the expenses of the Complainers and 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 Six of the Law Society's Table of Fees for general business together with a reasonable sum for posts and incidental outlays; and direct that publicity to include the name of the Respondents shall be given to this decision.

(signed) IAN S SMITH

Vice Chairman

8. A copy of the foregoing Interlocutor 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 22nd August 1996.

IN NAME OF THE TRIBUNAL

Vice Chairman

NOTE

At the commencement of the Hearing, a Medical Certificate was produced evidencing that the Second Respondent was unfit to attend the Hearing. There was no motion to adjourn the Hearing and the Tribunal resolved to proceed in the Second Respondent's absence.

The Complaint as lodged had contained charges of professional misconduct and inadequate professional services under nine separate heads. The Respondents admitted charges in respect of five of these matters. The admissions of the First Respondent were confined to inadequate professional services in relation to two aspects. The Second Respondent admitted three charges of professional misconduct and two further charges of having provided an inadequate professional service. The Fiscal for the Complainers accepted these admissions and did not seek any finding in respect of the remaining charges.

The first matter in respect of which the Second Respondent admitted professional misconduct resulted from an inspection of the Respondents' books of account by the Law Society. This inspection was carried out on 21st April 1993 and arising from the inspection, the Respondents were required to disclose the source of capital introduced into the business over the two preceding years. During the next six months, the Law Society pursued exhaustive enquiries but the Respondents and in particular the Second Respondent failed to disclose that in August 1991, a Mr "A", who was later to become a client of the firm, had advanced a total of £10,000. This information only came to light when Mr "A" himself communicated directly with the Law Society in 1995.

The second matter concerned a breach of Rule 5 of the Solicitors (Scotland) Practice Rules 1986. This Rule provides inter alia that a solicitor can only act for both the purchaser and the seller in a conveyancing transaction in any of the exceptional circumstances set out in that Rule. Among the exceptions is where both parties are established clients or the purchaser is an established client. In the particular transaction, the seller was indeed an established client but the purchaser, Miss “B” had only been introduced to the Respondents' firm by the estate agents who had attended to the sale.

Rule 5 contains a stipulation that in the event of any of the exceptions applying to the particular transaction, formal notice requires to be given to each of the parties to the effect that if a dispute arises, at least one of them will be required to consult an independent solicitor. The Respondents had indeed given such notices - demonstrating that the Respondents were not unaware of the terms of Rule 5. A fee quotation had been given to Miss “B” and it was explained by Counsel that the Second Respondent had mistakenly regarded this as sufficient to create a client relationship.

The remaining matter in which professional misconduct was admitted by the Second Respondent, followed on a complaint made by Mr and Mrs “F” to the Law Society on 20th April 1994. The Law Society had initially written to the Second Respondent on 6th May 1994. Despite various reminders, she did not reply until 1st November 1994. Thereafter until 24th July 1995, the Law Society pressed the Second Respondent for a satisfactory explanation of her failure to pursue the interests of Mr and Mrs “F” but the Second Respondent neglected to reply.

The Tribunal is satisfied that in respect of each of these matters there was professional misconduct on the part of the Second Respondent.

The Second Respondent is 59 years of age. In mitigation, Counsel referred to the Second Respondent's medical problems which had continued since June 1992. Her deteriorating health had caused debility and affected her concentration, and had ultimately caused the Second Respondent to retire from practice. She did not renew her Practising Certificate in November 1995.

The Tribunal takes a serious view of the matters giving rise to the findings of professional misconduct and would ordinarily have imposed a substantial penalty on the Second Respondent, particularly in respect of her lack of frankness in responding to the Law Society regarding her firms' capital position and the neglect of her responsibilities towards clients of the firm. However the Tribunal has taken into account the undertaking given on behalf of the Second Respondent that she will never seek to resume practice and the Second Respondent's limited financial resources; and it is with these considerations that the Tribunal has exceptionally restricted the penalty to that of a censure.

The Second Respondent admitted providing Mr "A" with an inadequate professional service in respect of her continuing failure to provide a full accounting. It was indicated at the Hearing that the fees for work carried out on behalf of Mr "A" had in fact exceeded his advance of £10,000 but nevertheless Mr "A" was entitled to a clear statement of account. The Second Respondent failed to provide such a statement even after the intervention of Mr "A's" new solicitors. In such circumstances, it is appropriate that Mr "A" should be compensated for the distress caused by the Second Respondent's neglect and it is with these considerations that the Second Respondent has been directed to pay the sum of £300 to Mr "A".

Both the First and Second Respondents accepted responsibility for the failure to give Miss “B” a satisfactory reply in response to the enquiries from her father. It is apparent from the “B’s” persistence that they were frustrated by the Respondents' failure to give satisfactory replies to their enquiries and it is with these considerations that the Tribunal has made an order jointly and severally on the Respondents to compensate Miss “B” to the extent of £200.

The First Respondent also acknowledged that there has been delay in returning papers to Mr “E’s” new solicitors, the papers having been mislaid within the Respondents' office. The Respondent had very properly refunded Mr “E” the cost of replacing the missing documents; and in this particular case, the Tribunal was of the opinion that no further order was appropriate.

No circumstances were disclosed which might have caused the Tribunal to exercise its limited discretion regarding publicity and accordingly publicity, to include the name of both Respondents, will be given to this decision.

Vice Chairman