

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

FINDINGS  
in Complaints  
by

THE COUNCIL OF THE LAW SOCIETY  
OF SCOTLAND

against

JOHN McLEOD, Solicitor,  
The First House, Udney Station, Ellon.

1. A Complaint dated July 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 John McLeod, Solicitor, the First House, Udney Station, Ellon (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 they might think right.
2. The Tribunal caused a copy of this Complaint as lodged to be served upon the Respondent. No Answers were lodged by the Respondent within the induciae.
3. In terms of their Rules, the Tribunal appointed the Complaint to be heard on 30th October 1996 and notice thereof was duly served upon the Respondent. Answers were then lodged on behalf of the Respondent.
4. A further Complaint dated October 1996 was lodged with the Tribunal by the Complainers requesting that the Respondent be required to answer the allegations contained in the Statement

of Facts accompanying that Complaint. This Complaint was served upon the Respondent. No Answers were lodged by the Respondent or on his behalf.

5. The Hearing took place on 30th October 1996. The Complainers were represented by Mr Brian A. Murphy, Solicitor, Ayr and the Respondent by Ms Christine McCrossan, Solicitor, Aberdeen. The parties agreed that the second Complaint should also be heard on this date and that the Hearings should be conjoined. A Joint Minute was lodged in respect of each Complaint wherein the material facts and the relative charges were admitted. No evidence was led and the Tribunal found the following facts established:-

(1) The Respondent is a solicitor enrolled in the Register of Solicitors in Scotland. He is 40 years of age. He was admitted as a solicitor on 14th May 1982 and was a partner in a firm of solicitors in Aberdeen from 1983 to 31st October 1992. Thereafter the Respondent practised on his own account from the First House, Udney Station, Ellon. The Respondent did not renew his Practising Certificate for the practice year 1995/96.

“A”

(2) “A” instructed the Respondent to represent him in contesting a Sheriff Court action of interdict by a social club, and to seek his reinstatement in the club as president. Following a Debate, the action was dismissed with an award of expenses in Mr “A's” favour. However the Respondent failed to take further steps to have Mr “A”. reinstated as president.

- (3) On 23rd May 1995, Mr “A” wrote a letter of complaint to the Law Society of Scotland. On 12th June 1995, the Law Society wrote to the Respondent. He failed to reply to this letter and reminders were sent on 26th July, 11th August, 5th September and 12th September 1995. The Respondent replied on 16th September 1995 acknowledging his failure to proceed with the second part of Mr “A's” instructions.
- (4) In the meantime, Mr “A” had instructed Messrs George Mathers & Co, Solicitors, Aberdeen. George Mathers & Co sent a mandate to the Respondent seeking delivery of his papers. Despite two reminders, the Respondent failed to obtemper this mandate.
- (5) By letter dated 18th September 1995, Messrs Mathers & Co reported the matter to the Law Society.
- (6) The Law Society wrote to the Respondent on 29th September 1995 but the Respondent failed to reply to this letter or to formal notices sent on 6th October 1995.

Mrs “B”

- (7) Mrs “B” instructed the Respondent to defend proceedings for recovery of heritable property brought against her in “P.1” Sheriff Court. The Respondent failed to reply to correspondence from Mrs “B” and did not return her telephone calls. On the few occasions when Mrs “B” was able to speak to the Respondent, he was under the influence of alcohol. He also failed to represent Mrs “B” when instructed to appear on her

behalf. On one occasion, Mrs “B” travelled from “P.2” to “P.3” and the Respondent failed to keep the appointment which he had made with her.

- (8) Mrs “B” complained to the Law Society and on 3rd October 1994, the Law Society wrote to the Respondent seeking his comments on her complaint. The Respondent failed to reply.
- (9) Mrs “B” subsequently instructed Messrs Lindsay & Kirk, Solicitors, Aberdeen. That firm wrote to the Respondent on 31st May 1995 seeking the delivery of Mrs “B's” papers. The Respondent failed to reply.
- (10) The Respondent failed to reply to a further letter from the Law Society dated 12th September 1995 and formal notices sent to him on 6th October 1995.

Messrs “C”

- (11) Messrs “C”, “P.4” had acted as “P.4” Agents for the Respondent in relation to criminal appeal and bail appeal matters. Despite various reminders, the Respondent failed to reply to correspondence from “C” in relation to outstanding fees and outlays.
- (12) On 29th March 1995, “C” wrote a letter of complaint to the Law Society. On 10th April 1995, the Law Society wrote to the Respondent. He failed to reply to this letter. A reminder was sent on 27th April 1995. The Respondent replied on 24th May 1995 indicating that an apology had been sent to “C” together with a

cheque in settlement. However the Respondent failed to make payment at that time. Following a further letter from the Law Society dated 7th June 1995, the Respondent sent a cheque to "C" which represented a part payment in respect of one matter only. The Law Society wrote again to the Respondent on 29th June 1995 following on which a further payment was made by the Respondent to "C", but this still left four accounts outstanding.

- (13) The Law Society wrote again to the Respondent on 20th July and sent a reminder on 6th September 1995. The Respondent replied by letter dated 16th September 1995 claiming that he had sent a cheque for £72.51 to "C" but no such payment was made despite further reminders dated 29th September and 16th October 1995.

"D"

- (14) From about May 1995, the Respondent represented Mr "E" in defending a family action. On 25th October 1995 an Interlocutor was issued in terms of which each party was found liable on an interim basis for one-half of a reporting officer's fee. On several occasions, the Respondent promised to settle the outstanding account and indeed claimed on several occasions that a cheque had been sent in settlement but no payment was made by the Respondent.

- (15) On 24th May 1996, the “D” reported the matter to the Law Society. The Law Society wrote to the Respondent on 30th May 1996 regarding his failure to make payment but the Respondent failed to reply to this letter or to reminders sent on 26th June and 24th July 1996. The Respondent also failed to respond to a formal notice sent to him on 13th August 1996.

Messrs John Laurie & Co

- (16) The Respondent had previously acted for “F”. Mr “F” subsequently instructed Messrs John Laurie & Co to act for him. The Respondent failed to obtemper a mandate sent to him by John Laurie & Co for delivery of Mr “F’s” papers.
- (17) By letter dated 9th April 1996, John Laurie & Co reported the matter to the Law Society. The Law Society wrote to the Respondent on 16th April 1996, he did not reply to this letter or reminders sent on 21st May, 7th June and 18th June 1996. A formal notice was sent to the Respondent on 5th July 1996 and a further communication was sent to him on 1st August 1996 and the Respondent again failed to reply.

Mr & Mrs “G”

- (18) The Respondent acted for Mr and Mrs “G” in May 1993 in relation to their purchase of a dwellinghouse at “P.5” at a price of £68,500. The Respondent also accepted instructions from the “H” Bank in relation to a loan of £40,000 to be secured over said subjects. Following settlement, Mr & Mrs “G” provided the sum of £685 to the Respondent to pay the

stamp duty on the Disposition and the Respondent rendered an account for £370.13 in respect of fees (no outlays being included). Later the Respondent requested the sum of £300.00 for further unspecified fees. The Respondent failed to have the Disposition stamped and neither the Disposition nor the Standard Security were recorded by the Respondent. On 1st July 1994, a complaint was made to the Law Society by Messrs Green Towns & Co initially on behalf of the "H" Bank and later on behalf of Mr & Mrs "G". The Respondent failed to respond to the Law Society's enquiries. Eventually the matter came before the Council of the Law Society at a meeting on 7th March 1996 when it was found that an inadequate professional service had been provided by the Respondent. It was determined that the Respondent should not be entitled to any fee in respect of the matter. It was also directed that he should refund to Mr & Mrs "G" the sum of £670.13 paid by them by way of fees and that he should pay to Mr & Mrs "G" the sum of £1,000 by way of compensation, all in terms of Section 42A of the Solicitors (Scotland) Act 1980. The decision was intimated to the Respondent by Recorded Delivery letter dated 3rd April 1996. In terms of that letter the Respondent was called upon to provide the Law Society with a written explanation of the steps which he had taken to comply with the foregoing. As at 5th June 1996, the Respondent had still failed to reply to that letter or to a reminder dated 2nd May 1996. The Respondent subsequently made proposals for settlement on the basis of instalments. These proposals were accepted on the strict understanding that the Respondent would pay £100 by the

end of August 1996 and monthly instalments thereafter. The first instalment was not paid until 12th September 1996.

- (19) The Respondent has failed to obtemper the Direction which had been duly intimated under Section 42A of the said Act.

“T”

- (20) Mr “T” consulted the Respondent in May 1990 in relation to a proposed action for divorce on the grounds of five years separation. Proceedings raised by the Respondent on behalf of Mr “T” in May 1991 were defended by his wife on the grounds that there had not been five years separation. His wife also claimed a financial provision. A Legal Aid Certificate was issued in the name of the Respondent.
- (21) Throughout 1992 there were negotiations between the parties in relation to the adjustment of the financial position. However by early 1993, the Respondent was failing to reply to letters from Mrs “T’s” Solicitors. He also failed to attend Court or make other arrangements for Mr “T’s” representation. As a result of the Respondent's failure to respond to the Scottish Legal Aid Board, the Legal Aid Certificate in favour of Mr “T” was suspended. At an interview with the Law Society on 29th April 1994 the Respondent undertook to contact Mr “T” and progress matters on his behalf. However he failed to reply to letters from the Law Society dated 13th and 30th May 1994. In July 1994 Mr “T” instructed other solicitors and Decree of Divorce was granted in late 1995. Legal Aid had by then been reinstated.

- (22) On 3rd April 1996, the Law Society asked the Respondent to produce his files relating to Mr “I’s” matrimonial matters. The Respondent failed to reply to this letter or to a formal notice dated 18th April 1996.
6. Having considered the foregoing, the Tribunal found the Respondent guilty of professional misconduct in respect of the following:-
- (i) His failure and unreasonable delay in replying to the correspondence from George Mathers & Co and the Law Society in relation to “A”,
  - (ii) His failure and unreasonable delay in replying to correspondence from Lindsay & Kirk and the Law Society in relation to Mrs “B”,
  - (iii) His failure and unreasonable delay in replying to correspondence from “C” and the Law Society in relation thereto,
  - (iv) His failure and unreasonable delay in replying to correspondence from the “D” and the Law Society in relation thereto,
  - (v) His failure to obtemper a Mandate when requested to do so by John Laurie & Co,
  - (vi) His failure and unreasonable delay in replying to correspondence from John Laurie & Co and the Law Society in relation to “F”, and
  - (vii) His failure to progress the divorce action for “I” and to respond to his enquiries.

7. The Tribunal further found that the Respondent had provided an inadequate professional service to
- (i) “A” in respect of his failure to progress Mr “A's” claim for reinstatement and to advise him thereon,
  - (ii) Mrs “B” in respect of his failure to reply adequately to her enquiries and to represent her interests, and
  - (iii) “T” in respect of his failure to communicate and to progress his divorce action.
8. Having heard the solicitor for the Respondent in mitigation, the Tribunal pronounced an Interlocutor in the following terms:-

Edinburgh 30th October 1996. The Tribunal having considered the Complaints dated July and October 1996 at the instance of the Council of the Law Society of Scotland against John A. McLeod, Solicitor, The First House, Udney Station, Ellon, find the Respondent guilty of professional misconduct in respect of his failure to attend to the affairs of a client, to obtemper a mandate and to reply to correspondence; Censure the Respondent and direct in terms of Section 53(5) of the Solicitors (Scotland) Act 1980 that any Practising Certificate held or to be issued to the Respondent shall be subject to such restriction as will limit him to acting as a qualified assistant to such employer or successive employers as may be approved by the Council of the Law Society of Scotland and that for an aggregate period of at least five years and thereafter until such time as he satisfies the Tribunal that he is fit to hold a full Practising Certificate; in respect that the professional services provided by the Respondent

to “A” and Mrs “B” were inadequate, Determine in terms of Section 53A(2)(a) of the said Act that the amount of fees and outlays to which the Respondent shall be entitled for the services to these respective clients shall be reduced to nil, and quoad ultra make no other determination or direction in respect of the findings of inadequate professional services; Order in terms of Section 53C(2) of said Act that the Direction by the Council of the Law Society of Scotland in favour of Mr and Mrs “G”, “P.5” dated 7th March 1996 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; Find the Respondent 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 Respondent be given to this decision.

(Signed) JOHN W LAUGHLAND

Chairman

9. 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 12 th December 1996.

IN NAME OF THE TRIBUNAL

Chairman

NOTE

The material facts and the related charges of professional misconduct and inadequate professional services in each Complaint were admitted by the Respondent and the whole circumstances are set out in the foregoing findings.

In a statement in mitigation, Ms McCrossan informed the Tribunal that the Respondent had commenced practice in 1982: in the following year, he entered into partnership, and he built up a successful criminal practice. However a continuing alcohol problem adversely affected his health and the partnership was dissolved at the end of 1992. He then commenced practice on his own account but he no longer had the support of an established firm, and the overlying circumstances caused a deterioration in both his professional and private life. As a result of his financial difficulties he did not renew his Practising Certificate for the practice year 1995/96. It was pointed out that in the Complaints there had been no criticism of the Respondent's capability as a solicitor and that the various matters all arose at the time of his personal difficulties.

It was observed that the Respondent had initially been successful in having the interdict against Mr "A" dismissed. Mrs "B" did not have any substantive defence to the action which had been brought against her; but in each case the Respondent failed to follow up his instructions. No fees had been rendered to either client and it was also confirmed that as Mr "I" had been entitled to Legal Aid, no fee had been rendered in that matter. There had been an arrangement for the Respondent to pay by instalments, the compensation payable to Mr and Mrs "G" and it was explained that his failure to pay the initial instalment timeously had resulted from a delay in receiving the proceeds of certain life policies which he had surrendered. He had since paid a second instalment and a further instalment was due to be paid on the day following the hearing.

A letter was produced from the Respondent's pastor confirming the recent support which has been given to the Respondent and that he is actively seeking rehabilitation; and the Tribunal also took into account the terms of a letter from the Respondent's former partner who reflected on the Respondent's personal problems and indicated that if the Respondent were to have assistance with administrative matters, he has the forensic ability to represent clients well in relation to criminal court work. Ms McCrossan emphasised that the Respondent's strength was in criminal practice and she suggested that in the event of the Tribunal making an order restricting the Respondent's Practising Certificate, such restriction might permit the Respondent to practice as a principal in criminal matters.

The Tribunal takes a serious view of the Respondent's various failures. He caused anxiety to a number of clients and considerable inconvenience to other members of the profession and the Law Society, and such conduct was undoubtedly damaging to the reputation of the profession. Serious consideration was accordingly given to suspending the Respondent for a significant period.

However the Tribunal has taken into account all that was said on behalf of the Respondent: in particular that he had been in practice for a number of years and that all the matters which have been the subject of complaint have all arisen comparatively recently. It is recognised that the Respondent has the capability of providing a service within the profession in relation to criminal court work but it was clear that he lacked the motivation in relation to several matters and for this reason it would be inappropriate that he should be permitted to work without supervision. The order which has been pronounced will enable the Respondent to re-apply for a Practising Certificate provided it can be demonstrated that there are adequate arrangements for his supervision. As indicated above, there were serious aspects to the Respondent's

neglect and it is therefore appropriate that such restriction on the Respondent's Practising Certificate should continue for a significant period. It is important that the Respondent re-establishes the responsibility and maturity to be expected of a solicitor who practises on his own account and it is for this reason that the order provides that the Respondent will require to hold and practise under a restricted Certificate for at least five years before he can apply to this Tribunal to have the restriction uplifted; and at that time, this Tribunal will have to be satisfied that the Respondent has overcome his addiction and that he then has the capacity to work without supervision.

Having regard to the Respondent's present financial circumstances, no useful purpose would be served by imposing any fine.

It was also established that in three separate matters, the Respondent had provided an inadequate professional service and the Tribunal is required under the provisions of Section 53A of the Solicitors (Scotland) Act 1980 to consider each of these cases separately. It was noted that no fee had been rendered by the Respondent for his work on behalf of Mr "A" and Mrs "B"; and the Tribunal is satisfied that there can be suitable recompense to these clients by ordering that the Respondent shall not be entitled to any fee in relation to these matters. Mr "T" was entitled to Legal Aid. Accordingly no question arises of waiving any fee; and in the circumstances, it is not appropriate to make any compensation order.

There remains the previous Order in favour of Mr and Mrs “G” which had been made by the Council of the Law Society in accordance with the provisions of Section 142 of the said Act. The Tribunal was pleased to note that arrangements had indeed been made and were now being pursued for the Respondent to settle his liability under that Order by monthly instalments. However it is a matter of record that the Respondent failed to settle the first instalment timeously and in such circumstances it is appropriate that a further Order is now made under Section 53C which can be enforced in the event of the Respondent failing to settle the balance.

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

Chairman